

CONFIDENTIAL
MR. RAJIV JAITLEY - 7/16/2012

Page 130	Page 132
<p>1 A. Sure;</p> <p>2 "Given the apparent sensitivity of the</p> <p>3 relationship with this manager, no request was</p> <p>4 made to review how a trade is made and allocated</p> <p>5 to a client - however, I note that the investment</p> <p>6 team has recorded that a Fairfield Partner has</p> <p>7 previously been given such access and there is</p> <p>8 absolutely no reason why we should not make a</p> <p>9 similar request."</p> <p>10 Q. Is this what you were referring</p> <p>11 earlier as a walk-through?</p> <p>12 A. That's correct.</p> <p>13 Q. Why did you bold and underline the</p> <p>14 section?</p> <p>15 A. Because I really thought that that</p> <p>16 was something we ought to do.</p> <p>17 Q. When you --</p> <p>18 A. And particularly given the evidence</p> <p>19 that we had that other people had been able to do</p> <p>20 it, I just could see absolutely no reason why we</p> <p>21 were not able to ask the same question of them --</p> <p>22 of Bernie Madoff.</p> <p>23 Q. Was that a major point of contention</p> <p>24 between you and -- on the one hand, and Manuel,</p> <p>25 Hugh Burnaby-Atkins and Jonathan Clark, on the</p>	<p>1 into Optimal Arbitrage.</p> <p>2 Q. So it was another investment that --</p> <p>3 OIS managed that was submanaged by Madoff; is that</p> <p>4 correct?</p> <p>5 A. Yes. I mean, essentially, the --</p> <p>6 the Optimal investments into Madoff were done,</p> <p>7 if I remember correctly, through two -- there</p> <p>8 were -- there were two separate investments. One</p> <p>9 was through Optimal Arbitrage, where obviously it</p> <p>10 was just one investment amongst many others; and</p> <p>11 SUS was the -- the single manager fund, if you</p> <p>12 like, of just Madoff.</p> <p>13 Q. And is this what you were referring</p> <p>14 earlier as one of the concerns you had with</p> <p>15 Madoff, the lack of a complete set of documents?</p> <p>16 A. That's correct.</p> <p>17 THE EXAMINER: Are you referring --</p> <p>18 you're referring to the contractual documentation</p> <p>19 you were referring to earlier?</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. BLEICHMAR:</p> <p>22 Q. Now, further down in that paragraph,</p> <p>23 the last sentence, which is quite long --</p> <p>24 A. Sorry, this is on page 25 still?</p> <p>25 Q. Correct.</p>
Page 131	Page 133
<p>1 other?</p> <p>2 A. Yes.</p> <p>3 Q. And why do you say that it was a</p> <p>4 major point of contention?</p> <p>5 A. Because I wanted to do it and they</p> <p>6 didn't.</p> <p>7 Q. Let me direct you to now page 25 of</p> <p>8 133.</p> <p>9 A. Sorry, page 25?</p> <p>10 Q. Twenty-five. You see there's a</p> <p>11 point number 1 there, where it says "Integrity and</p> <p>12 Enforceability of contractual arrangements with</p> <p>13 the Broker Dealer"?</p> <p>14 A. Yes.</p> <p>15 Q. And the first sentence says:</p> <p>16 "Currently the Optimal Accounts do not</p> <p>17 have a complete set of documentation in relation</p> <p>18 to each account (i.e. Infiltrator for Optimal</p> <p>19 Arbitrage and SUS)..."</p> <p>20 A. Yes.</p> <p>21 Q. What was "Infiltrator for Optimal</p> <p>22 Arbitrage"?</p> <p>23 A. That was another subsidiary,</p> <p>24 if I remember correctly. It was just a -- it was</p> <p>25 just a codename that they used for the investment</p>	<p>1 A. Yes.</p> <p>2 Q. It says:</p> <p>3 "In addition, we should confirm whether</p> <p>4 the trading strategy has changed since the</p> <p>5 original trading authorisations which were entered</p> <p>6 into state they trade no less than 35 equities in</p> <p>7 the S&P 100 whereas Bernie Madoff stated in the</p> <p>8 meeting that they deal in the top 45 equities..."</p> <p>9 Why was that important for you to note in</p> <p>10 your report?</p> <p>11 A. Well, I'm not sure how we could do</p> <p>12 any compliance tests or checks. I mean, this</p> <p>13 was -- this was another bone of contention,</p> <p>14 because, as far as Hugh Burnaby-Atkins was</p> <p>15 concerned, this was investment stuff that was none</p> <p>16 of my business.</p> <p>17 So he was saying, "Why do you need to</p> <p>18 know? It's -- it's investment strategy", and</p> <p>19 I was saying, "Well, I can't actually do my work</p> <p>20 without actually understanding whether it's 35 or</p> <p>21 45, so I need to know, and I also need to know</p> <p>22 when it changed and who agreed to it".</p> <p>23 So, you know, there were arguments going</p> <p>24 on around that as well, at the time.</p> <p>25 Q. And what was your understanding as</p>

34 (Pages 130 to 133)

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OPTIMAL_BERLAMONT-000034

CONFIDENTIAL
MR. RAJIV JAITLEY - 7/16/2012

Page 134	Page 136
<p>1 to who selected the 35 or 45 stocks to be 2 purchased or sold? Was it Madoff or was it OIS? 3 A. It was Madoff. 4 Q. Did you ever resolve this issue? 5 A. No. 6 Q. Why not? 7 A. Because I was told it was not part 8 of my remit. So it was an argument that we had -- 9 well, actually, no, that's not strictly correct, 10 because we -- we finalized the trading document 11 eventually, and in that document it does -- it 12 resolves -- I think it -- it goes to 45 equities, 13 if I remember correctly, but the issue of why it 14 had changed never got resolved. 15 Q. Looking at it from today's 16 standpoint, why do you think -- why do you think 17 that a discrepancy existed? 18 MR. DANON: Objection to the form. 19 THE WITNESS: I have no idea. 20 BY MR. BLEICHMAR: 21 Q. Looking at point number 2, where it 22 says "Traceability and recovery of assets in the 23 event of a failure of the Broker Dealer or a 24 counterparty", in the first sentence, do you see 25 where it says:</p>	<p>1 conduct on a business to verify that the 2 operations are operating in the way that they are 3 set out to operate, and, typically, you would 4 expect a broker dealer to have a SAS 70 report. 5 Q. Did you ever see a SAS 70 report for 6 Madoff? 7 A. No. 8 Q. When you said that you were told 9 finally that it just wasn't going to happen, who 10 told you that? 11 A. Manuel. 12 Q. What did he say? 13 A. He said, "We're not going to do it". 14 Q. Did he give you a reason? 15 A. No. 16 Q. And when did Manuel tell you he was 17 not going to do it? 18 A. This was probably about two months 19 before I actually submitted my resignation. 20 That's about the time it took me to get out. 21 Q. Do you recall approximately when you 22 submitted your resignation? 23 A. I believe I submitted it in 24 October 2007, and I think I was in place at 25 AXA Investment Management in November 2007.</p>
Page 135	Page 137
<p>1 "... nothing in the documentation 2 reviewed to-date indicates that properly 3 segregated ... accounts have been set up for the 4 receipt of cash from the -- from which the 5 transactions on an execution only basis will be 6 managed." 7 A. Yes. 8 Q. Did you ever obtain any confirmation 9 as to whether the client accounts were properly 10 segregated? 11 A. No. That's one of the reasons why 12 I resigned. 13 Q. Why is that a reason that you 14 resigned? 15 A. Because I felt that the SAS 70 16 report that I was asking would cover that area, 17 and that's what would give us the comfort, and 18 when the final -- when I was told finally that it 19 just wasn't going to happen, that is when 20 I basically rang up a headhunter and said, "Get me 21 out of here". 22 Q. What is a SAS 70 report? 23 A. It basically is a -- a report -- 24 it's a set of agreed-upon procedures which a -- 25 an independent party, normally an auditor, will</p>	<p>1 Q. So if two -- two months before your 2 resignation, it would have been approximately 3 August of 2007; correct? 4 A. Yes. 5 Q. So, more or less, in August of 2007, 6 Manuel told you that he just was not going to ask 7 for a SAS 70 report? 8 A. That's right. 9 THE EXAMINER: Did you ask him why not? 10 Did you ask him why not? 11 THE WITNESS: Yes, and he basically said 12 it was something that would just -- he wasn't 13 going to ask him because we would never get it, 14 and my view was that we should, at the very least, 15 ask for it, because if we haven't asked for it, we 16 haven't been given the "no". 17 BY MR. BLEICHMAR: 18 Q. When you say "he wasn't going to ask 19 him", just to clarify the record, you're saying 20 that Manuel wasn't going to ask Madoff for the 21 SAS 70 report; correct? 22 A. That's correct. I mean, my view was 23 that, even to the extent that we actually had to 24 pay for it, it was something that we ought to do. 25 It was the least that I felt that we needed to do,</p>

35 (Pages 134 to 137)

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CONFIDENTIAL
MR. RAJIV JAITLEY - 7/16/2012

Page 138	Page 140
<p>1 just to get comfortable that the structure</p> <p>2 operated as he was telling us.</p> <p>3 Q. And you never received the SAS 70 --</p> <p>4 the SAS 70 report; correct?</p> <p>5 A. No.</p> <p>6 Q. Let me move on to point 3. It's</p> <p>7 labeled "Monitoring compliance with the given</p> <p>8 mandate". Do you see the second sentence says:</p> <p>9 "We should verify on a regular basis</p> <p>10 (a) that all trades are in accordance with the</p> <p>11 mandate and (b) that we receive an adequate rate</p> <p>12 of interest for the periods when the positions</p> <p>13 have been exited and holdings -- and the holdings</p> <p>14 are in cash."</p> <p>15 Just focusing on (a), do you have an</p> <p>16 understanding as to whether Optimal verified on a</p> <p>17 regular basis that all trades are in accordance</p> <p>18 with the mandate?</p> <p>19 A. Well, again, you will see my email</p> <p>20 exchange on how upset I got when I discovered that</p> <p>21 they weren't doing it, and what I was told at the</p> <p>22 time, by -- by Jonathan Clark -- because my first</p> <p>23 conversation was -- I think the -- the</p> <p>24 conversation was Tasneem Jeevanjee -- actually,</p> <p>25 no, sorry.</p>	<p>1 So, you know, there should be a -- a --</p> <p>2 a modicum of reasonableness to be able to sort of</p> <p>3 say that there's -- there's something there that</p> <p>4 we can check back to.</p> <p>5 So -- and at the time, they sort of said,</p> <p>6 "Yeah, yeah, yeah, you know, we already do</p> <p>7 something like that anyway, so that -- that's not</p> <p>8 a problem, we'll do it", and I -- I didn't really</p> <p>9 think too much of it. You know, once we'd spoken</p> <p>10 and we'd agreed on it, I thought it'd happen.</p> <p>11 So when I then rang up to sort of see how</p> <p>12 it was going, he said, "Oh, no, no, we haven't</p> <p>13 done that -- we haven't done that for months".</p> <p>14 I said, "Well, what do you mean you haven't done</p> <p>15 it for months?"</p> <p>16 And he said, "Look, Rajiv, you know, we</p> <p>17 all know you're a difficult guy. You know, we had</p> <p>18 to calm you down at the -- at that particular</p> <p>19 point, so we agreed to it, but, you know, there's</p> <p>20 really no need to do it, we're all over this, we</p> <p>21 understand the investment strategy. You know, it</p> <p>22 doesn't need this", and my response, again, is</p> <p>23 clear, it's set out in the email that I wrote,</p> <p>24 where I just said it was completely unacceptable</p> <p>25 and that -- that I hoped that Manuel would support</p>
Page 139	Page 141
<p>1 Jonathan and myself had a conversation on</p> <p>2 the phone, and it was basically the extent --</p> <p>3 at -- at that particular point, there'd been lots</p> <p>4 of other stuff going on. I think, if I remember</p> <p>5 correctly, we'd -- the UBS Dillon Read issues were</p> <p>6 also going on at the same time, and it was just a</p> <p>7 point of -- of catching up.</p> <p>8 So I rang Jonathan up to say, you know,</p> <p>9 "How's -- how's it going? How's -- how's the</p> <p>10 trade verification going?" Because one of the</p> <p>11 things was that when -- when I'd come out -- come</p> <p>12 away from that first meeting with Madoff, one of</p> <p>13 the things that we agreed, post that meeting, was</p> <p>14 that we would start doing this whole process</p> <p>15 again, of verifying.</p> <p>16 So I -- I sort of felt, well, okay,</p> <p>17 you know, even if we've got somebody who can</p> <p>18 receive these paper tickets from Madoff, put them</p> <p>19 into a spreadsheet, go back into the market to see</p> <p>20 what prices or price ranges there were for those</p> <p>21 securities on that particular day, then, you know,</p> <p>22 within a couple of basis points, we should be able</p> <p>23 to get to the -- the position where we can at</p> <p>24 least verify that these trades are happening the</p> <p>25 way he says they are.</p>	<p>1 me on it, and -- and, again, you know, in</p> <p>2 fairness, Manuel had always said, "Yes, yes, yes",</p> <p>3 to me, "of course we're going to support it".</p> <p>4 Then he'd go to Hugh and Jonathan and</p> <p>5 say, "Don't worry about it, we'll -- you know,</p> <p>6 we'll -- we'll sort things out". So he was,</p> <p>7 again, doing his, sort of, role of placating</p> <p>8 everyone on it, but, you know, that was my</p> <p>9 reaction to it. I was -- I was extremely</p> <p>10 concerned that they hadn't -- hadn't done it.</p> <p>11 So that, again, was another one of these</p> <p>12 issues where I started thinking, well, are these</p> <p>13 guys really serious about doing due diligence.</p> <p>14 Q. You said that Jonathan Clark told</p> <p>15 you, "Look, Rajiv, we all know you're a difficult</p> <p>16 guy, we had to calm you down at that particular</p> <p>17 point, so we agreed to it, but there's really no</p> <p>18 need to it"; right?</p> <p>19 A. Yes.</p> <p>20 Q. Do you feel -- do you think he was</p> <p>21 lying to you at the time?</p> <p>22 A. No. I think -- I mean, I'm quite</p> <p>23 surprised that Jonathan is actually a defendant to</p> <p>24 these proceedings. I mean, he's about as straight</p> <p>25 list a guy as you can get, in my view, for what</p>

36 (Pages 138 to 141)

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CONFIDENTIAL
MR. RAJIV JAITLEY - 7/16/2012

Page 142	Page 144
1 it's worth.	1 controlled the trading operation on the trading
2 Q. Point number 4 --	2 floor; and his wife purportedly did the books.
3 THE EXAMINER: Are you going to spend a	3 Q. So what risk arose out of the fact
4 lot more time on this document?	4 that the family members were so involved with --
5 MR. BLEICHMAR: On this document? Not a	5 in the Madoff operation?
6 lot more, but a little more.	6 A. Well, lack --
7 THE EXAMINER: Okay.	7 MR. DANON: Objection to form.
8 MR. BLEICHMAR: Do you want to take a	8 THE WITNESS: Lack of independence and
9 break for lunch?	9 conflicts of interest.
10 THE EXAMINER: No, I -- if you're going	10 BY MR. BLEICHMAR:
11 to get to the end of this document shortly, that	11 Q. And was that a red flag?
12 would probably be a convenient time.	12 A. Yes.
13 MR. BLEICHMAR: Okay. I will do that.	13 Q. And you understand the term
14 THE EXAMINER: Sorry, 4.	14 "red flag"; correct?
15 BY MR. BLEICHMAR:	15 A. Yes, I do.
16 Q. "4. Risk of Fraud and	16 Q. And if you could, please, just
17 misrepresentation of process"; do you see that?	17 describe it for -- for the record?
18 A. Yes.	18 A. Well, red flags with -- in -- in
19 Q. "One of the difficulties" -- the	19 hedge fund speak, if I can put it that way, are
20 first sentence, do you see where it says:	20 areas of concern that one might sort of examine
21 "One of the difficulties with this	21 further.
22 account is the current inability to verify actual	22 Q. Was the inability to confirm a
23 trading activity in the market through	23 counterparty also a red flag?
24 counterparty and other market user intelligence."	24 A. Yes.
25 What do you mean by -- or could you	25 Q. And it was a red flag that was never
Page 143	Page 145
1 explain what "verifying actual trading activity	1 resolved; correct?
2 through counterparty" means?	2 A. That's correct.
3 A. Well, to be able to go to a	3 MR. BLEICHMAR: Let's -- let's go off
4 counterparty and say, "Have you entered into this	4 the record.
5 trade with Madoff?"	5 THE VIDEO OPERATOR: Going off the
6 So if somebody was saying to us, "Yes,	6 record. The time is 13:12.
7 we're entering into these trades", that would give	7 (1:13 p.m.)
8 us some comfort that it was actually happening the	8 (Break taken.)
9 way he was describing it.	9 (1:49 p.m.)
10 Q. And were you ever -- ever able to	10 THE VIDEO OPERATOR: Going back on the
11 confirm with a counterparty that Madoff was	11 record. The time is 13:49. Thank you.
12 entering into trades?	12 (Exhibit 6 marked for identification.)
13 A. No.	13 BY MR. BLEICHMAR:
14 Q. Within point number 4, the	14 Q. Good afternoon, Mr. Jaitley, I put
15 second-to-last sentence says:	15 in front of you what I marked as exhibit number 6,
16 "A major issue is that the key controls	16 which is a document bearing Bates stamps 490570.
17 are all in the hands of family members ..."	17 Do you see that the top email reflects an email
18 Do you see that?	18 from you to Jonathan Clark on May 17th, 2006?
19 A. Yes.	19 A. Yes.
20 Q. What did you mean by that?	20 Q. Did you prepare this email?
21 A. Well, the -- the lawyer that --	21 A. I cannot recall, but if that's what
22 the general counsel was Peter Madoff, his brother.	22 it says, I have no reason to dispute it.
23 The -- sorry, I'm getting this the wrong way	23 Q. There's no reason to dispute the
24 around. It was his niece who was general counsel;	24 authenticity of this document; correct?
25 Peter was effectively his number two; his two sons	25 A. No.

37 (Pages 142 to 145)

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MR. RAJIV JAITLEY - 7/16/2012

Page 146	Page 148
<p>1 Q. Could you tell me, after reading 2 this email, what this email discussion is about? 3 A. Well, again, I can't remember the 4 message on -- the discussion we had on Tetragon, 5 but as far as Madoff is concerned, this sends me 6 five years of audit reports from the SEC. 7 Q. And do you see in the next 8 paragraph, the third paragraph in Jonathan Clark's 9 email to you, where it says, the second sentence: 10 "I spoke to the DTC today and they 11 provide nothing - even auditor requests go through 12 their client (ie Madoff)." 13 A. Yes. 14 Q. And then he says: 15 "However, they did verify that Madoff is 16 a 'direct participant'. 17 Correct? 18 A. That's correct. 19 Q. And you answer: 20 "What do you mean by direct participant?" 21 Right? 22 A. Yes. 23 Q. And did he provide you an answer to 24 your question? 25 A. I can't recall whether he did or</p>	<p>1 A. Yes. 2 Q. Do you have any reason to believe 3 that you did not send that email? 4 A. No. 5 Q. Any reason to dispute the 6 authenticity of the document? 7 A. No. 8 Q. After -- could you -- if you could 9 please read the document and tell us what the 10 email chain is about? 11 A. It was -- it was to do with the 12 meeting with the auditors, and it -- it was a 13 question of, basically, what they were going to be 14 asked, and I was really querying, again, based on 15 sort of we -- what we discussed earlier, as to 16 exactly what they were going to be discussing with 17 the auditor. 18 Q. And this is an email that you sent 19 while at work; correct? 20 A. Yes. 21 Q. Do you see in the first line you -- 22 you write: 23 "... why is an assessment of operational 24 robustness being led by them?" 25 A. That's correct.</p>
Page 147	Page 149
<p>1 didn't. He probably picked up the phone, but 2 I can't remember. 3 Q. And what is your understanding of 4 what a direct participant in DTC is? 5 A. Well, it is one of the reasons why 6 I was asking the question, because I wasn't sure 7 what the implications of it were. Again, I can 8 speculate as to what I think it means, but -- 9 THE EXAMINER: Did you ever get a 10 response? 11 THE WITNESS: I can't recall whether we 12 had a discussion, but it was -- it was fairly 13 normal. I mean, sometimes we would just pick up 14 the phone if, you know, we'd received an email and 15 we'd have a discussion. 16 MR. BLEICHMAR: Let me mark as exhibit 7 17 a document bearing Bates stamps 3144197. 18 (Exhibit 7 marked for identification.) 19 BY MR. BLEICHMAR: 20 Q. Do you recognize this document, 21 Mr. Jaitley? 22 A. Yes. 23 Q. And do you see that the top email is 24 an email from you to Manuel Echeverria dated 25 July 10th, 2006?</p>	<p>1 Q. And why did you ask that question? 2 A. Because I didn't believe that they 3 were appropriately qualified to -- to lead it. 4 Q. And at the end of the email, 5 you say: 6 "... I think you need ..." 7 Strike that. 8 When you say "they were" -- "I didn't 9 believe they were appropriately qualified", who 10 are you referring to? 11 A. Sorry? 12 Q. Who are you referring to when you 13 say "they"? 14 A. Hugh Burnaby-Atkins and 15 Jonathan Clark. 16 Q. Thank you. At the end of that first 17 email you say: 18 "... I think you need to put your foot 19 down on this?" 20 Do you see that? 21 A. Yes. 22 Q. What did you mean by that? 23 A. Well, this is an -- an email 24 addressed to Manuel Echeverria, and I was 25 effectively asking for his support, to say,</p>

38 (Pages 146 to 149)

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CONFIDENTIAL
MR. RAJIV JAITLEY - 7/16/2012

Page 150	Page 152
<p>1 "I should be the one who should be leading this 2 discussion and there should be a proper agenda to 3 it". 4 Q. And what — did Manuel put his foot 5 down? 6 A. No. 7 Q. In other words, you did not lead the 8 discussion with Madoff's auditors; correct? 9 A. Well, as, again, the emails will 10 show you, I came in towards the tail end of the 11 conference call that they were having. 12 MR. BLEICHMAR: I'm going to mark as 13 exhibit number 8 a document bearing Bates stamps 14 3130940. 15 (Exhibit 8 marked for identification.) 16 BY MR. BLEICHMAR: 17 Q. Do you see that the top email is an 18 email from you to Manuel Echeverria dated July 11, 19 2006? 20 A. Yes. 21 Q. And is that an email that you sent? 22 A. Yes. 23 Q. And you sent it while you were at 24 work? 25 A. Yes.</p>	<p>1 your pardon, are investors. 2 BY MR. BLEICHMAR: 3 Q. And — 4 A. And other operators that we were 5 speaking to. 6 Q. And why were you concerned that 7 investors and other operators would not see you as 8 professionals? 9 A. Because we needed to be asking 10 pertinent, relevant, searching questions. 11 Q. And after that you say: 12 "... I think we will come across like 13 amateurs." 14 Do you see that? 15 A. Yes. 16 Q. And what did you mean by that? 17 A. Well, that we weren't professionals. 18 Q. And by that you mean, if the call 19 was led by Hugh Burnaby-Atkins and Jonathan Clark, 20 and not by you; correct? 21 A. Yes. 22 MR. DANON: Objection to form. 23 BY MR. BLEICHMAR: 24 Q. At the end of that email, the last 25 sentence, you say:</p>
Page 151	Page 153
<p>1 Q. Any reason to believe that this 2 document is not authentic? 3 A. No. 4 Q. Towards the end of the first 5 sentence — well, strike that. 6 At the end of the first line, do you see 7 where it says: 8 "... I am ..." 9 And then it goes on in the second line: 10 "... very concerned about the view people 11 have of us as a consequence ..." 12 A. Yes. 13 Q. What did you mean by that? 14 A. Well, I wanted to make sure that 15 when people saw us operating within the market, 16 that we were seen as professionals who knew what 17 we were doing. 18 Q. And when you say "people" here, who 19 would — were you referring to? 20 A. Hugh Burnaby-Atkins and 21 Jonathan Clark. 22 Sorry, I'm just looking at this again. 23 THE EXAMINER: Yes, just reflect on it. 24 THE WITNESS: Yes, well, I mean, 25 "people" here, in the context of the email, I beg</p>	<p>1 "I have just had an email exchange with 2 Jonathan - the accounts he has for 2005 are not 3 even complete - not sure what sort of review has 4 been conducted here." 5 Do you see that? 6 A. Yes. 7 Q. What did — what did you mean by 8 that? 9 A. Well, Jonathan was suggesting he'd 10 done a review, and I was saying, "Well, I'm not 11 sure what sort of review it would be", given that 12 the accounts weren't even complete. 13 Q. In your mind, had an operational 14 due diligence review been completed? 15 A. I'm sorry? 16 Q. Let me rephrase that. 17 In the email, you say, "I'm not sure what 18 sort of review has been conducted here". What 19 were you asking or what were you suggesting to 20 to Mr. Echeverria with that — with that sentence? 21 A. I think it relates to the accounts. 22 Q. In what sense? 23 A. Well, whether he'd actually reviewed 24 them and what sort of review he'd conducted. 25 Q. In other words, whether Manuel had</p>

39 (Pages 150 to 153)

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OPTIMAL_BERLAMONT-000039

CONFIDENTIAL
MR. RAJIV JAITLEY - 7/16/2012

Page 154	Page 156
<p>1 actually reviewed the accounts of Madoff?</p> <p>2 A. No, whether Jonathan --</p> <p>3 Q. Oh.</p> <p>4 A. -- had actually conducted a review.</p> <p>5 Q. In other words, you're -- you're</p> <p>6 asking here -- you're not sure that Jonathan Clark</p> <p>7 has -- has conducted a review of the accounts of</p> <p>8 Madoff; is that right?</p> <p>9 MR. DANON: Objection to form.</p> <p>10 THE WITNESS: No, what I was saying was</p> <p>11 I'm not sure what sort of review he's conducted,</p> <p>12 given that he was saying that he had conducted a</p> <p>13 review.</p> <p>14 BY MR. BLEICHMAR:</p> <p>15 Q. Did you come to understand what sort</p> <p>16 of review had been conducted after this?</p> <p>17 A. Well, again, as I've said in the</p> <p>18 email, when I looked at the accounts, they were</p> <p>19 incomplete and they related to the -- the broker</p> <p>20 dealership anyway, so it was a -- related to a</p> <p>21 different entity, in effect.</p> <p>22 Q. When you say "they related to the</p> <p>23 broker dealership anyhow, so it related to a</p> <p>24 different entity", are you distinguishing between</p> <p>25 the broker dealer side of Madoff's business and</p>	<p>1 the auditing documents that Jonathan Clark was</p> <p>2 looking at?</p> <p>3 A. No, because there weren't any</p> <p>4 accounts on -- on that side. There were the</p> <p>5 broker dealer accounts.</p> <p>6 I mean, essentially, we were looking for</p> <p>7 as many sources of information as we could get,</p> <p>8 and that was one of the sources.</p> <p>9 (Exhibit 9 marked for identification.)</p> <p>10 MR. BLEICHMAR: I have marked as</p> <p>11 exhibit 9 a document bearing Bates stamps 267596</p> <p>12 through 7601.</p> <p>13 BY MR. BLEICHMAR:</p> <p>14 Q. Mr. Jaitley, do you see this document</p> <p>15 reflects an email from you to Manuel Echeverria</p> <p>16 dated September 25th, 2006?</p> <p>17 A. Yes.</p> <p>18 Q. Do you recognize this document?</p> <p>19 A. Yes.</p> <p>20 Q. Did you send this document while at</p> <p>21 work at Banco Santander?</p> <p>22 A. Yes.</p> <p>23 Q. Any reason to dispute the</p> <p>24 authenticity of this document?</p> <p>25 A. No.</p>
Page 155	Page 157
<p>1 the investment advisory business?</p> <p>2 A. Yes.</p> <p>3 Q. So, if I understand you correctly,</p> <p>4 Jonathan Clark had looked at the broker dealership</p> <p>5 side of the business --</p> <p>6 A. Yes.</p> <p>7 Q. -- but not at the investment</p> <p>8 advisory side of the business?</p> <p>9 A. Well, the broker dealer side of the</p> <p>10 business is the one that had accounts, because</p> <p>11 that was the entity, so there was an entity that</p> <p>12 was filing accounts, so that is what he had</p> <p>13 actually looked at, but when we actually looked</p> <p>14 at -- and I can't recall exactly what was missing,</p> <p>15 in terms of it being complete or not, but,</p> <p>16 you know, clearly I'd noticed that they weren't,</p> <p>17 and I was -- again, I was making the point as to</p> <p>18 whether they were really the right people to be</p> <p>19 doing it, because that was effectively what I was</p> <p>20 raising an issue over.</p> <p>21 Q. When you say "the broker dealer side</p> <p>22 of the business is the one that had accounts, so</p> <p>23 that was the entity that was filing accounts",</p> <p>24 does that mean that the investment advisory side</p> <p>25 of the business were not -- did not -- were not</p>	<p>1 Q. Can you tell us what this email</p> <p>2 exchange is about?</p> <p>3 A. Well, it's -- it's a response to an</p> <p>4 earlier email, which I think is also there, which</p> <p>5 sets out concerns on my performance in the</p> <p>6 function of operational due diligence, and sets</p> <p>7 out a number of concerns that the investment team</p> <p>8 had about my performance in doing operational</p> <p>9 due diligence and my response to it.</p> <p>10 Q. And what were the concerns that --</p> <p>11 well, strike that.</p> <p>12 And what was your response to the</p> <p>13 concerns expressed by the investment team?</p> <p>14 A. Well, they're set out in the email.</p> <p>15 I disagreed with a number of the assertions and</p> <p>16 I gave my reasons for it.</p> <p>17 Q. Let me refer you to the end of your</p> <p>18 email, which is at page 599.</p> <p>19 A. Sorry, that's?</p> <p>20 Q. Bates stamped 599.</p> <p>21 A. Oh, yes.</p> <p>22 Q. Do you see towards the end of your</p> <p>23 email the paragraph that begins with "I am</p> <p>24 committed"?</p> <p>25 A. Yes.</p>

40 (Pages 154 to 157)

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OPTIMAL_BERLAMONT-000040

CONFIDENTIAL
MR. RAJIV JAITLEY - 7/16/2012

Page 158	Page 160
<p>1 Q. Do you -- do you see that it says,</p> <p>2 towards the middle of that paragraph:</p> <p>3 "... I genuinely feel that your note</p> <p>4 today - despite what you say and despite your</p> <p>5 comments that you are reflecting opinion - is not</p> <p>6 one of support ..."</p> <p>7 A. Yes.</p> <p>8 Q. Why did you say that?</p> <p>9 A. Because I felt that I was not being</p> <p>10 supported in doing the work that I wanted to do</p> <p>11 in order to create the -- the world-class team</p> <p>12 that I was looking to create, and that I had been</p> <p>13 given an opportunity to -- to do, in coming to --</p> <p>14 to Optimal.</p> <p>15 Q. And you were not given the support,</p> <p>16 in your view, by whom?</p> <p>17 A. By Manuel.</p> <p>18 Q. And how did he -- how did you come</p> <p>19 to this view that Manuel was not supporting you?</p> <p>20 A. Well, I think, again, that email</p> <p>21 sets out sort of my -- my reasoning behind it,</p> <p>22 but, essentially, it was one of a lack of support,</p> <p>23 because, on the one hand, he wanted a whole host</p> <p>24 of things to be done and completed, but I wasn't</p> <p>25 being really given the support in order to --</p>	<p>1 reports of the process that we had on new</p> <p>2 investments, but not on existing ones.</p> <p>3 Amaranth was, in fact, a seed investment,</p> <p>4 so Optimal had been a seed investor in Amaranth,</p> <p>5 and, again, part of the reason for this was that,</p> <p>6 when we'd gone to meet Amaranth, I had, at that</p> <p>7 point, done a financial statement review on</p> <p>8 Amaranth and that had highlighted a number of</p> <p>9 concerns for us.</p> <p>10 There were issues, such as the traders'</p> <p>11 bonuses were actually being paid out of the fund</p> <p>12 accounts rather than from the managers' sort of</p> <p>13 money, so there was provision in the accounts for</p> <p>14 that; there were complicated intermediate</p> <p>15 structures that were lending and cross-lending</p> <p>16 within the organization.</p> <p>17 So when we arrived at Amaranth and --</p> <p>18 THE EXAMINER: Can I -- has this got</p> <p>19 anything to do with Madoff at all?</p> <p>20 MR. BLEICHMAR: It goes to the overall</p> <p>21 operational due diligence procedures.</p> <p>22 THE EXAMINER: Well, I understand that,</p> <p>23 but I don't really want to get into all the</p> <p>24 details of the difficulties you found with</p> <p>25 Amaranth. You found difficulties?</p>
Page 159	Page 161
<p>1 to be able to fulfill that.</p> <p>2 Q. Was your view that others were</p> <p>3 getting Manuel's support, but you were not?</p> <p>4 A. Well, I think operational</p> <p>5 due diligence, as a whole, was not being given</p> <p>6 that support, so I don't think -- you know, it</p> <p>7 wasn't direct -- I don't think it was directed to</p> <p>8 me personally, but it was directed at operational</p> <p>9 due diligence at large.</p> <p>10 Q. Let me point you to the first page</p> <p>11 of the email, point number 7.</p> <p>12 A. Sorry, that's on the second page?</p> <p>13 Q. Oh, I'm sorry, yes, on the -- on the</p> <p>14 second page.</p> <p>15 Do you see towards the middle of that</p> <p>16 paragraph where it says:</p> <p>17 "A full non-investment due diligence has</p> <p>18 never been done on Amaranth ..."</p> <p>19 A. Yes.</p> <p>20 Q. What do you mean by that, that a</p> <p>21 non-investment due diligence -- a full</p> <p>22 non-investment due diligence had never been done?</p> <p>23 A. Well, this goes back to part of the</p> <p>24 rationale behind my being appointed, where what we</p> <p>25 had agreed was that I would do due diligence</p>	<p>1 THE WITNESS: Yes.</p> <p>2 THE EXAMINER: And no -- no full</p> <p>3 due diligence was ever carried out?</p> <p>4 THE WITNESS: That's correct.</p> <p>5 THE EXAMINER: I think, Mr. Bleichmar,</p> <p>6 that is probably enough, for the purposes of this.</p> <p>7 MR. BLEICHMAR: Yes, thank you.</p> <p>8 BY MR. BLEICHMAR:</p> <p>9 Q. Moving on to point number --</p> <p>10 number 9, do you see in the middle of that</p> <p>11 paragraph where you say:</p> <p>12 "... I am not going to prepare</p> <p>13 substandard reports simply to meet a requirement</p> <p>14 to produce a report ..."</p> <p>15 A. That's correct.</p> <p>16 Q. What did you mean by that?</p> <p>17 A. Well, there was a concern at the</p> <p>18 time that there weren't enough of these reports.</p> <p>19 We talked about substance over form earlier on,</p> <p>20 and there was this feeling that what needed to be</p> <p>21 there were reports. They weren't -- they weren't</p> <p>22 too worried about sort of the content of it, they</p> <p>23 just wanted the reports there so that they could</p> <p>24 say there were reports on each one of these and</p> <p>25 they were able to say that.</p>

41 (Pages 158 to 161)

CONFIDENTIAL
MR. RAJIV JAITLEY - 7/16/2012

Page 162	Page 164
<p>1 Now, for me, what was far more important</p> <p>2 was that (a) I had done the work; (b) that I had</p> <p>3 identified what the issues were that might be of</p> <p>4 concern to me, that I had communicated those to</p> <p>5 the investment analysts and we had a course of</p> <p>6 action that had been agreed as to what we did on</p> <p>7 it.</p> <p>8 The fact that we had a piece of paper</p> <p>9 there was neither here nor there, because, as far</p> <p>10 as I was concerned, I had enough there as evidence</p> <p>11 of the work that I'd actually done.</p> <p>12 Q. When you say that there was a</p> <p>13 concern at the time that there weren't enough of</p> <p>14 these reports, who was expressing that concern?</p> <p>15 A. Well, I think they were being</p> <p>16 expressed particularly by three people, which was</p> <p>17 Manuel, Hugh and Esteban.</p> <p>18 Q. And how did you come to that</p> <p>19 understanding? Did they tell you directly?</p> <p>20 A. Esteban and Manuel certainly did.</p> <p>21 I think Hugh I -- I got to hear about via other</p> <p>22 people.</p> <p>23 And, actually, there was also a</p> <p>24 management committee meeting where this was</p> <p>25 discussed in a fair amount of detail, where</p>	<p>1 your number two?</p> <p>2 A. Right. My number two was a lady</p> <p>3 called Sharmila Soosaipillai. She was a qualified</p> <p>4 accountant -- sorry, I will spell that out for you</p> <p>5 later.</p> <p>6 She was a qualified accountant. She had</p> <p>7 experience as -- in doing hedge fund audits, and</p> <p>8 she was somebody I'd trained at GAM, so I was</p> <p>9 quite comfortable that she would do and follow the</p> <p>10 processes that I wanted followed in pursuing the</p> <p>11 work we were doing.</p> <p>12 Q. And do you think she was a --</p> <p>13 a competent professional in conducting operational</p> <p>14 due diligence?</p> <p>15 A. Yes, she was.</p> <p>16 Q. And how long had you worked with her</p> <p>17 at GAM?</p> <p>18 MR. DANON: Object as outside the scope</p> <p>19 on the issues of Sharmila.</p> <p>20 THE EXAMINER: What, you mean all the</p> <p>21 issues of the -- the team?</p> <p>22 MR. DANON: Well, I think in the issues</p> <p>23 he's got Jonathan Clark, but not the entire</p> <p>24 Optimal due diligence team.</p> <p>25 THE EXAMINER: You're looking at</p>
Page 163	Page 165
<p>1 I essentially had to defend my position, because</p> <p>2 the committee was saying this wasn't good enough</p> <p>3 and that they needed reports.</p> <p>4 Q. And did you prepare these reports?</p> <p>5 A. Eventually, yes; but once I was</p> <p>6 happy that I'd done enough work and that there was</p> <p>7 some substance to it.</p> <p>8 Q. Did anybody support your position</p> <p>9 that the reports were not as important as getting</p> <p>10 the substance of the work done?</p> <p>11 A. No. I was a lone voice there and,</p> <p>12 again, the emails are ample evidence of that,</p> <p>13 I think.</p> <p>14 Q. You were head of operational</p> <p>15 due diligence at Optimal. Who else was in -- in</p> <p>16 your team?</p> <p>17 A. Well, the team slowly expanded. It</p> <p>18 was just me, to start off with, when I first</p> <p>19 arrived. I then brought in a member of my former</p> <p>20 team to assist me, as number two.</p> <p>21 We had -- we -- over time, we recruited</p> <p>22 other people as well. Do you want me to go</p> <p>23 through the entire team as it was, or --</p> <p>24 Q. Well, why don't we -- we go slowly</p> <p>25 and break it up. Why don't we start with your --</p>	<p>1 schedule A?</p> <p>2 MR. DANON: Yes. Just to -- to put that</p> <p>3 in focus, to the extent that person would have</p> <p>4 function with Madoff, then I think it would be in</p> <p>5 the scope.</p> <p>6 MR. BLEICHMAR: Yeah, I think it -- why</p> <p>7 don't we explore the functions of -- of the team</p> <p>8 and who was involved in Madoff, and then we can</p> <p>9 move on from there? But I need to find out who</p> <p>10 was involved with Madoff or not.</p> <p>11 THE EXAMINER: It seems to me that,</p> <p>12 within 1, the due diligence conducted on Madoff,</p> <p>13 you are entitled to know who in the team were</p> <p>14 conducting it, but establish that each witness was</p> <p>15 involved with Madoff -- sorry, each -- each person</p> <p>16 he -- he mentions was involved in the Madoff</p> <p>17 due diligence.</p> <p>18 BY MR. BLEICHMAR:</p> <p>19 Q. Could you please tell me, within</p> <p>20 your due diligence team, who was involved in --</p> <p>21 at any level in conducting due diligence of</p> <p>22 Madoff?</p> <p>23 A. Well, there were probably two people</p> <p>24 who were directly involved, though all the team at</p> <p>25 some point would have been involved in</p>

42 (Pages 162 to 165)

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CONFIDENTIAL
MR. RAJIV JAITLEY - 7/16/2012

Page 166	Page 168
<p>1 discussions, because I -- I don't believe in 2 operating in isolation. 3 So if I had an issue, what we would 4 effectively do -- we -- we were all in one room. 5 I would effective say, "Guys, down tools. Here is 6 the issue. What do you think?" 7 Q. Did you discuss -- 8 A. And then everyone would -- would 9 then debate the issues around it. 10 Q. Did you discuss Madoff with 11 Ms. Soosaipillai? 12 A. Yes. She reviewed the first draft 13 of my report and we discussed, for example, toning 14 down some of the language and some of the issues, 15 just because of, again, the fact that we didn't 16 actually have evidence on -- on some of the 17 issues, and so that was discussed with her. 18 Q. So going back to my original 19 question, was it your view that -- no, there was 20 an answer to that question. 21 How long did you work with 22 Ms. Soosaipillai at GAM, prior to working with her 23 at Banco Santander? 24 A. Again, I'm not quite sure, because 25 she was one of the later recruits that I brought</p>	<p>1 Q. And do you have a recollection as to 2 when you had these conversations with 3 Ms. Soosaipillai? 4 A. It would have been after my visit. 5 Q. After your visit to Madoff? 6 A. Yes. 7 Q. So is it fair to say that it was 8 sometime after February 2006? 9 A. Yes. 10 Q. And you said she provided comments 11 to your report? 12 A. Yes. 13 Q. Do you remember what comments she 14 provided? 15 A. No. 16 Q. Do you remember whether she had any 17 substantial disagreements with anything in your 18 report? 19 A. I think not of substance; probably 20 of tone, which we -- we discussed. 21 Q. And what was her comment about the 22 tone? 23 A. Well, some of it she felt, well, 24 you know, in terms of views, you know, what 25 evidence did we have, how -- how were we going to</p>
Page 167	Page 169
<p>1 in, so it's probably between six months to a year, 2 but I -- I am not certain of my facts, again, 3 there. 4 Q. But you believe she was a -- a -- a 5 competent professional in conducting operational 6 due diligence; correct? 7 A. Yes. She was competent. 8 Q. What -- what did you discuss with 9 respect to Madoff with Ms. Soosaipillai? 10 A. Well, we discussed the -- the report 11 generally. We discussed how we -- how we dealt 12 with the issues and how we would take it forward, 13 what sort of actions we should take, what were the 14 ways of getting comfort on some of the issues. 15 So, you know, could we -- could we get 16 comfort by looking at things in a different way. 17 Fairly -- it's fairly standard stuff for -- for -- 18 you know, for a due diligence operation, where if 19 you -- if you're identifying concerns, sometimes 20 it is not -- it's not just a question of attacking 21 it to say, "There is a particular flag here, 22 you know, how do you deal with it?"; it's a 23 question of, well, what other set of mitigating 24 circumstances might there be and how do you 25 actually deal with it.</p>	<p>1 approach it in terms of the action points, what 2 could we do, what could we realistically do within 3 the time scale. We talked about those. 4 Q. Did she suggest that you toned down 5 your draft? 6 A. Yes. 7 Q. And did you tone it down? 8 A. Yes. 9 Q. In what -- 10 A. Some of it. 11 Q. In what ways did you tone it down? 12 A. I can't really recall now. 13 Q. Was there one draft or multiple 14 drafts of your report? 15 A. I think there was one draft, which 16 we discussed internally as a team, and there -- 17 then there was the document that you've shown me. 18 THE EXAMINER: Do we have the draft? 19 MR. BLEICHMAR: That's what I'm getting 20 to. 21 THE EXAMINER: Well, you must know by 22 now. 23 MR. BLEICHMAR: We don't. 24 THE EXAMINER: You don't? 25 MR. BLEICHMAR: Well --</p>

43 (Pages 166 to 169)

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CONFIDENTIAL
MR. RAJIV JAITLEY - 7/16/2012

Page 170	Page 172
<p>1 THE EXAMINER: You don't?</p> <p>2 MR. BLEICHMAR: Well, we haven't seen</p> <p>3 it.</p> <p>4 THE EXAMINER: You haven't seen it.</p> <p>5 When I say "do we have", I mean is it in play, and</p> <p>6 the answer is no.</p> <p>7 BY MR. BLEICHMAR:</p> <p>8 Q. Do you know where you stored that</p> <p>9 draft at the time?</p> <p>10 A. It would have been on the Optimal</p> <p>11 drives.</p> <p>12 Q. Did you keep a copy of that draft</p> <p>13 when you left Optimal?</p> <p>14 A. No.</p> <p>15 Q. Who else was a member of your team</p> <p>16 with whom you discussed this report, or this</p> <p>17 draft -- the draft of the Jaitly report?</p> <p>18 A. What, within the operational</p> <p>19 due diligence team?</p> <p>20 Q. Yes.</p> <p>21 A. I mean, I can't remember who were</p> <p>22 constituent members of the team at that particular</p> <p>23 point, because Chris Gibson, who was the junior</p> <p>24 analyst, was there. He used to do my monthly</p> <p>25 reporting, which we used to send to</p>	<p>1 you know, as a specific major area of concern.</p> <p>2 It was -- every time we discussed issues around</p> <p>3 the due diligence we were doing, then we would</p> <p>4 discuss it as a group, and I would quite often ask</p> <p>5 the team, you know, just to join in the</p> <p>6 conversation and discuss it.</p> <p>7 Q. You've previously mentioned --</p> <p>8 A. And given that we were in one room,</p> <p>9 sometimes even the marketing people sitting</p> <p>10 around, who were in the same room, would join in</p> <p>11 and air -- and air views, so ...</p> <p>12 Q. When you say you were in one room,</p> <p>13 are you referring to your London office?</p> <p>14 A. Yes, that's correct.</p> <p>15 Q. There was one big area where</p> <p>16 everybody was sitting?</p> <p>17 A. Yeah, it's slightly smaller -- well,</p> <p>18 it's probably half the size of this room and, yes,</p> <p>19 we all sat in -- in the same room.</p> <p>20 Q. Previously, you mentioned that</p> <p>21 Ms. Soosaipillai thought you should tone down the</p> <p>22 report; correct?</p> <p>23 A. Mmm-hmm.</p> <p>24 THE EXAMINER: We need a verbal</p> <p>25 response.</p>
Page 171	Page 173
<p>1 Grupo Santander, on risk exposures, so when we</p> <p>2 were reporting every month on the portfolio, that</p> <p>3 used to go -- he used to prepare and collate that</p> <p>4 information to send out.</p> <p>5 THE EXAMINER: Sorry, who was he?</p> <p>6 I missed his name?</p> <p>7 THE WITNESS: Christopher Gibson.</p> <p>8 He was a junior analyst. He was actually a Geneva</p> <p>9 analyst who was then seconded over and sort of</p> <p>10 assisted us.</p> <p>11 BY MR. BLEICHMAR:</p> <p>12 Q. So, so far we have Ms. Soosaipillai</p> <p>13 and Mr. Gibson as members of the team --</p> <p>14 A. Yes.</p> <p>15 Q. -- whom you discussed the Madoff</p> <p>16 report with?</p> <p>17 A. Yes, but -- but, I mean, there were</p> <p>18 other members, and I can't quite remember at which</p> <p>19 point they joined the team, but people like</p> <p>20 Michelle Hughes or Michelle Perry -- I'm not quite</p> <p>21 sure which way around she was then --</p> <p>22 Kirstin Meadows, who was one of the lawyers.</p> <p>23 But we would have had -- I mean, it --</p> <p>24 again, it was fairly -- Madoff, in itself, was not</p> <p>25 a -- a specific item that we sort of dealt with,</p>	<p>1 THE WITNESS: Oh, sorry. Yes. Sorry</p> <p>2 about that.</p> <p>3 BY MR. BLEICHMAR:</p> <p>4 Q. When she said to tone it down, was</p> <p>5 it because it was inaccurate or was it because she</p> <p>6 didn't want to create problems at Optimal?</p> <p>7 A. No, I think it was -- when we looked</p> <p>8 at reports, any report that went out, we looked at</p> <p>9 a couple of things: what sort of risks were we</p> <p>10 identifying; what sort of risks did it create for</p> <p>11 us -- I mean, I was, after all, the risk officer</p> <p>12 for Optimal, so I was looking at protecting</p> <p>13 Optimal; and how we dealt with them and how we</p> <p>14 recorded it. So these were general discussions.</p> <p>15 It was, again, nothing unusual in terms</p> <p>16 of Madoff alone. You know, similar discussions</p> <p>17 were had in relation to some of the investments</p> <p>18 we've discussed. It's fairly normal. There was</p> <p>19 nothing unusual in it.</p> <p>20 And, you know, the thing that I always</p> <p>21 encouraged my team to do was to actually say,</p> <p>22 "You know what, we disagree with you".</p> <p>23 Q. Did Ms. Soosaipillai say,</p> <p>24 "We disagree with you with respect to the Jaitly</p> <p>25 report"?</p>

44 (Pages 170 to 173)

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OPTIMAL_BERLAMONT-000044

CONFIDENTIAL
MR. RAJIV JAITLEY - 7/16/2012

Page 174	Page 176
<p>1 A. No.</p> <p>2 Q. Did she say, "I agree with you with</p> <p>3 respect to the Jaitley report"?</p> <p>4 A. Can I put it in those terms?</p> <p>5 Probably.</p> <p>6 Q. After you left Banco Santander in</p> <p>7 October 2006 -- 2007 --</p> <p>8 A. '7.</p> <p>9 Q. -- where did you go?</p> <p>10 A. I went to AXA Investment Management.</p> <p>11 Q. And what did you do there?</p> <p>12 A. I was the chief operating officer</p> <p>13 for the fund of hedge fund platform.</p> <p>14 Q. So it was a similar type of job?</p> <p>15 A. It was. Slightly wider, because</p> <p>16 I was responsible for other operations as well.</p> <p>17 Q. And are you still involved in the</p> <p>18 hedge fund operational due diligence business?</p> <p>19 A. Yes, I am. I -- I got fired from</p> <p>20 AXA Investment Manager in -- AXA Investment</p> <p>21 Managers for vetoing an investment they wished to</p> <p>22 make, and after that I set up a consultancy which</p> <p>23 advises on governance and due diligence.</p> <p>24 Q. When you say "AXA", is that A-X-A or</p> <p>25 is that Aksia, A-K-S-I-A?</p>	<p>1 were quite different as to how risk ought to be</p> <p>2 managed. And I felt that the only thing that</p> <p>3 I had which I needed to protect was my reputation</p> <p>4 as an operational due diligence specialist, and so</p> <p>5 I decided it was appropriate for me to leave.</p> <p>6 BY MR. BLEICHMAR:</p> <p>7 Q. You felt your reputation was in --</p> <p>8 in jeopardy if you did not leave?</p> <p>9 A. That's correct.</p> <p>10 MR. BLEICHMAR: Can we go off the record</p> <p>11 for one minute?</p> <p>12 THE EXAMINER: Yes.</p> <p>13 THE VIDEO OPERATOR: Going off the</p> <p>14 record. The time is 14:23.</p> <p>15 (2:23 p.m.)</p> <p>16 (Break taken.)</p> <p>17 (2:24 p.m.)</p> <p>18 MR. BLEICHMAR: Let me mark this is --</p> <p>19 THE EXAMINER: Hang on.</p> <p>20 THE VIDEO OPERATOR: Going back on the</p> <p>21 record. The time is 14:24. Thank you.</p> <p>22 (Exhibit 10 marked for identification.)</p> <p>23 BY MR. BLEICHMAR:</p> <p>24 Q. I have marked as exhibit 10 a</p> <p>25 document bearing Bates stamps 3972069 through 71.</p>
Page 175	Page 177
<p>1 A. No, A-X-A.</p> <p>2 Q. And that was also here in London;</p> <p>3 correct?</p> <p>4 A. That's correct.</p> <p>5 Q. Previously, you mentioned that at --</p> <p>6 at one point in time you resigned from</p> <p>7 Banco Santander; correct?</p> <p>8 A. Yes.</p> <p>9 Q. Can you tell me about that</p> <p>10 resignation?</p> <p>11 A. What would you like to know?</p> <p>12 Q. Why did you resign?</p> <p>13 A. Well, I resigned --</p> <p>14 THE EXAMINER: Can we get a date first?</p> <p>15 When -- when it was?</p> <p>16 THE WITNESS: Sorry?</p> <p>17 THE EXAMINER: Can we get -- establish</p> <p>18 when it was, first?</p> <p>19 THE WITNESS: It was October 2007.</p> <p>20 I've -- again, I think you've got the email which</p> <p>21 sets out the exact date.</p> <p>22 The reason I resigned was because I felt</p> <p>23 that Optimal weren't serious about risk; they</p> <p>24 weren't really serious about creating an -- an</p> <p>25 operational due diligence team; and that our views</p>	<p>1 A. Thank you.</p> <p>2 Q. Do you see that there is an email</p> <p>3 from you to a number of recipients, including</p> <p>4 Michelle Hughes, on April 20th, 2007?</p> <p>5 A. Yes, that's correct.</p> <p>6 Q. Did you send this email?</p> <p>7 A. Yes, I believe so.</p> <p>8 Q. And you sent it in connection with</p> <p>9 your responsibilities at Optimal?</p> <p>10 A. Yes.</p> <p>11 Q. Any reason to believe that this</p> <p>12 document is not authentic?</p> <p>13 A. No.</p> <p>14 Q. Let me direct you to the second</p> <p>15 paragraph, the one that says, "SUS". Do you see</p> <p>16 where it says:</p> <p>17 "SUS - there is no due diligence on this</p> <p>18 fund ..."</p> <p>19 A. Yes.</p> <p>20 Q. What do you mean by that?</p> <p>21 A. Well, precisely that: we hadn't</p> <p>22 done any due diligence.</p> <p>23 Q. So, in your view, there was no</p> <p>24 due diligence that had been done on -- on the --</p> <p>25 on SUS?</p>

45 (Pages 174 to 177)

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OPTIMAL_BERLAMONT-000045

CONFIDENTIAL
MR. RAJIV JAITLEY - 7/16/2012

Page 178	Page 180
<p>1 A. That's right. Just to get some 2 terminology correct here, when we normally talk 3 about due diligence, we are talking about the 4 full due diligence process. When we talk about 5 manager visits, we are talking about the visit 6 aspect which we were doing on the existing 7 portfolio, as opposed to the new. 8 So with new investments, we did a full 9 due diligence process, that's the due diligence; 10 with the existing portfolio, we did manager 11 visits. 12 So what is happening, in the context 13 of this particular email, we were launching a 14 Spanish product, and there was a whole host of 15 things that had been to go into it, one of which 16 was Madoff. But the regulators in Spain required 17 us to have certain bits of paperwork in place, and 18 this was really part of that process, to say what 19 we thought was going to be enough to meet those 20 particular requirements in Spain, as opposed to 21 anything else. 22 Q. So you're making a difference 23 between due diligence and just a manager visit; 24 correct? 25 A. That's correct, yes.</p>	<p>1 Q. And what did they say to you? 2 How did they react? 3 A. They were not surprised. 4 Q. They were not surprised? 5 A. No. 6 Q. Is that because you had been 7 expressing your views throughout your tenure at 8 Banco Santander? 9 A. That's correct. 10 Q. Did they agree with your assessment 11 of operational due diligence at Optimal? 12 A. Yes. 13 Q. Did you discuss your resignation 14 with Hugh Burnaby-Atkins? 15 A. Yes, I did, just prior to leaving, 16 I think, when he sort of rang to wish me well. 17 Q. Did you have any substantive 18 conversations about your reasons for your 19 departure with Hugh Burnaby-Atkins? 20 A. He knew that I -- it was basically 21 that I was unhappy about the way risk had been 22 dealt with, and I -- I did say to him as well 23 I was unhappy with the way he had responded on the 24 risk issues and the support that I had had. 25 I mean, he was very conciliatory at that</p>
Page 179	Page 181
<p>1 Q. And just to get a clear answer, 2 the -- in your view, the only thing that had been 3 done in SUS, that you had done, was a -- was a 4 manager visit; correct? 5 A. Yes, and as -- as we've discussed 6 before, there were a number of things that we 7 hadn't been able to complete that I would regard 8 as important on a manager visit. 9 Q. And those were some of the aspects 10 we've talked about; correct? Like counterparty -- 11 A. Such as verification, and so on. 12 Q. Independent verification of trading; 13 correct? 14 A. Yes. 15 Q. Did you discuss your resignation 16 with Ms. Soosaipillai? 17 A. Yes. 18 Q. And what did you say to her? 19 A. Well, I discussed it with my entire 20 team. They were all aware of my decision and the 21 reasons why I decided to go. 22 Q. And what did you tell them? 23 A. I told them that I wasn't happy with 24 the way risk was being dealt with. I felt, 25 therefore, that it was time for me to move on.</p>	<p>1 point, but then I was leaving and I think none of 2 us wanted to leave with bad blood between us. 3 Q. So you left on amicable terms? 4 A. Yes. I mean, like I've always 5 said, you know, these were, I thought, decent 6 people, but it's just that they had a different 7 view as to how to approach operational 8 due diligence and it didn't happen to be my view, 9 which I thought needed to be a lot more thorough. 10 Q. A lot more? 11 A. Thorough. 12 Q. Thorough. 13 Did you discuss your resignation with 14 Jonathan Clark? 15 A. No. But, again, Jonathan sent me a 16 very nice email when I left, saying how much he'd 17 learned from me. 18 THE EXAMINER: "I wish you well, but not 19 here"? 20 THE WITNESS: Precisely. 21 BY MR. BLEICHMAR: 22 Q. Do you think he learned from you? 23 A. In retrospect, I'm almost certain he 24 did. 25 Q. And why do you say that?</p>

46 (Pages 178 to 181)

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CONFIDENTIAL
MR. RAJIV JAITLEY - 7/16/2012

Page 182	Page 184
<p>1 A. Well, I guess history shows that -- 2 you know, I -- I always say to my teams that you 3 can't necessarily identify issues when you do 4 due diligence, but so long as you look at the 5 checks and balances that exist within operations, 6 then you should be able to identify weak points, 7 and it should be possible to convince people to 8 strengthen those weak points so that at least 9 you've done as much as you can to mitigate some of 10 the issues that you might identify. 11 MR. BLEICHMAR: Let me mark as 12 exhibit 11 a document bearing Bates stamps 1804843 13 through 891. 14 (Exhibit 11 marked for identification.) 15 BY MR. BLEICHMAR: 16 Q. Do you recognize this document, 17 Mr. Jaitley? 18 A. Well, I certainly recognize -- 19 there were various versions of this floating 20 around, so I can certainly recognize a version of 21 it, but I don't know whether this is one that I've 22 specifically seen or not. 23 Q. Is this a document that you 24 prepared? 25 A. I'm sure I would have had input into</p>	<p>1 the marketing people, and then other people would 2 have had input into their respective sections. 3 But whether or not they did with this particular, 4 specific document, I cannot tell. 5 Q. And if you go to page 34, I think 6 that is one of the pages that you mentioned that 7 you were involved with; correct? 8 A. Yes. 9 Q. And you see it's a list of primary 10 procedures concerning non-investment risk 11 management; right? 12 A. That's correct. 13 Q. Do you see where it says "On-site 14 visit"? 15 A. Yes. 16 Q. Those are the types of issues that 17 you would conduct operational due diligence on; 18 correct? 19 A. That's correct. 20 Q. And you would want to get complete 21 answers to any issues that arose in connection 22 with those areas; correct? 23 A. Yes. 24 Q. And if you didn't get complete 25 answers, what would you do?</p>
Page 183	Page 185
<p>1 it in relation to risk management, but otherwise, 2 no. 3 Q. And when you say "input in relation 4 to risk management", are you -- are you referring 5 on page number 1 to the bullet point in the agenda 6 called "Risk management"? 7 A. I'm referring to page 34, 8 "Non-investment risk management - primary 9 procedures". 10 Q. And did you -- 11 A. And subsequent ones after that. 12 Q. And were you involved in preparing 13 those sections, as part of your work 14 responsibilities at Optimal? 15 A. Yes. I mean, either I or one of my 16 team will have done something to that effect, 17 which I would have been responsible for. 18 Q. You don't have any reason to dispute 19 the authenticity of this document; correct? 20 A. No. 21 Q. Do you have an understanding as to 22 who else prepared the other sections of the 23 document? 24 A. Well, there would have been a number 25 of people involved in the preparation, primarily</p>	<p>1 A. Well, we'd note it on the -- the 2 report, and we would discuss it in -- in committee 3 to see what the issues might be, whether there 4 were any mitigating circumstances, whether there's 5 any other way we could get comfort, whether there 6 were things that we wanted -- a side letter, for 7 example. 8 Q. With respect to the issue of 9 independent verification of the trading with 10 Madoff -- 11 A. Yes. 12 Q. -- did you ever -- were you ever 13 able to independently verify that trading and 14 complete that due diligence? 15 A. No, that's why I wanted the SAS 70 16 report done. 17 Q. And that was not done either; 18 correct? 19 A. No. 20 MR. BLEICHMAR: I'm going to mark as 21 exhibit number 12 a document bearing Bates stamps 22 3742549 through 672. 23 (Exhibit 12 marked for identification.) 24 BY MR. BLEICHMAR: 25 Q. Do you recognize this document,</p>

47 (Pages 182 to 185)

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CONFIDENTIAL
MR. RAJIV JAITLEY - 7/16/2012

Page 186	Page 188
<p>1 Mr. Jaitley?</p> <p>2 A. Yes, I do.</p> <p>3 Q. Did you prepare this document?</p> <p>4 A. It was prepared by my team, yes.</p> <p>5 Q. And at your direction?</p> <p>6 A. Yes.</p> <p>7 Q. And it was prepared as part of your</p> <p>8 duties and your team's duties in connection with</p> <p>9 their work at Banco Santander?</p> <p>10 A. That's correct.</p> <p>11 Q. And --</p> <p>12 A. This is part of the -- the processes</p> <p>13 that we wanted to bring in, which was being</p> <p>14 pointed out to say that I had no process.</p> <p>15 Q. Any reason to dispute the</p> <p>16 authenticity of this document?</p> <p>17 A. No.</p> <p>18 THE EXAMINER: So was this prepared by</p> <p>19 you and your team from scratch?</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. BLEICHMAR:</p> <p>22 Q. Let me direct you -- on the first</p> <p>23 page, do you see where there's an appendix E,</p> <p>24 "Manager visit template"?</p> <p>25 A. Yes.</p>	<p>1 even got involved with spending time reviewing</p> <p>2 documents, I would send out a pre-investment</p> <p>3 questionnaire, and what that actually identified</p> <p>4 were a couple of, again, red flags, to use the</p> <p>5 word we used earlier, and -- and this would be for</p> <p>6 new investments now, not the existing portfolio,</p> <p>7 because it just wasn't possible to do it, just in</p> <p>8 terms of the time.</p> <p>9 So I would send this out, and,</p> <p>10 essentially, based on the responses I got, that</p> <p>11 would be my starting position to actually say,</p> <p>12 "Do we actually want to spend any time on this?",</p> <p>13 or, "This is not going to fly".</p> <p>14 So you had the pre-investment</p> <p>15 questionnaire that went out. You then had the</p> <p>16 initial due diligence. As part of the initial</p> <p>17 due diligence, you then had the manager visit.</p> <p>18 So it was -- it was part of that.</p> <p>19 You then had the ongoing monitoring that</p> <p>20 happened as well, and the ongoing monitoring was</p> <p>21 generally done either off the back of the</p> <p>22 financial statements when we got them, or if there</p> <p>23 was a particular issue that had cropped up that we</p> <p>24 decided merited a visit, and so off the back of a</p> <p>25 manager visit, we would then do an annual review.</p>
Page 187	Page 189
<p>1 Q. Is it correct that the manager visit</p> <p>2 is only one of the many aspects of operational</p> <p>3 due diligence?</p> <p>4 A. That's correct.</p> <p>5 Q. And is it correct that the only</p> <p>6 aspect of operational due diligence conducted on</p> <p>7 Madoff had been the manager visit?</p> <p>8 MR. DANON: Objection to form.</p> <p>9 THE WITNESS: No, that's not correct</p> <p>10 because, as we've discussed before, I had reviewed</p> <p>11 the contracts, and obviously there were issues</p> <p>12 around the contracts, and then there was the --</p> <p>13 the manager visit. So there were two aspects to</p> <p>14 it.</p> <p>15 BY MR. BLEICHMAR:</p> <p>16 Q. There were two aspects out of all</p> <p>17 the aspects listed in this first page; correct?</p> <p>18 A. Well, they were the two main</p> <p>19 aspects, because if you look at -- you know,</p> <p>20 these -- these cover different things, so I would</p> <p>21 not really have expected corporate actions as part</p> <p>22 of the -- the Madoff process, but -- I mean, the</p> <p>23 specific things there would be the pre-investment</p> <p>24 initial due diligence -- I mean, the way we worked</p> <p>25 it was, before an investment commenced, before we</p>	<p>1 So -- I mean, if you think about Madoff</p> <p>2 and the February 2006 report, to an extent, that</p> <p>3 was part of the ongoing process, the ongoing</p> <p>4 due diligence process that we had, and that's what</p> <p>5 we were, really -- sort of trying to cover it off</p> <p>6 as part of that.</p> <p>7 Q. Do you have any understanding as to</p> <p>8 whether a full due diligence was performed on</p> <p>9 Madoff at the time of the initial investment?</p> <p>10 A. Only insofar as the reports that</p> <p>11 we've seen. That's the information that we had.</p> <p>12 Q. And the information -- and the</p> <p>13 documents you've seen and the reports you've seen,</p> <p>14 you haven't seen anything else that -- other than</p> <p>15 those reports that you've seen here today?</p> <p>16 A. Yep.</p> <p>17 MR. DANON: Objection to form.</p> <p>18 THE WITNESS: Not that I can recall.</p> <p>19 Sorry.</p> <p>20 BY MR. BLEICHMAR:</p> <p>21 Q. What is your understanding of how</p> <p>22 the initial investment in Madoff was done?</p> <p>23 Or let me rephrase that: is it your</p> <p>24 understanding that Madoff came to Optimal through</p> <p>25 Manuel Echeverria?</p>

48 (Pages 186 to 189)

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MR. RAJIV JAITLEY - 7/16/2012

Page 190	Page 192
<p>1 A. I don't know. 2 MR. DANON: Objection to form. 3 BY MR. BLEICHMAR: 4 Q. Do you have an understanding as to 5 Mr. Madoff's relationship with Mr. Echeverria? 6 A. They were friendly, they had 7 conversations. That's about all I can tell you. 8 And obviously we had capacity. 9 Q. And that was very important for 10 Optimal, to have capacity; correct? 11 A. Yes. 12 MR. DANON: Objection to form. 13 BY MR. BLEICHMAR: 14 Q. You previously mentioned that, 15 in addition to your meeting with Madoff in 16 February of 2006, you had, I think I recall you 17 said, two telephone conversations, approximately 18 with Mr. Madoff? 19 A. No, that's after the 2006 meeting. 20 So, subsequently, I had two conversations with 21 him, to deal with the legal issues in the 22 contracts. 23 Q. So, just to put all your 24 interactions with Madoff together, is this the 25 universe of all your interactions: the visit --</p>	<p>1 were. So, in the end, I guess I won the argument 2 to say that there were issues, and that's what we 3 then tried to address. 4 Q. And the subject matter of those 5 two telephone calls was essentially the contracts; 6 correct? 7 A. Yep. He wanted to know exactly what 8 we were looking for. He wanted to understand what 9 we wanted in the -- in the contracts and what my 10 reasons for it were, and I was quite clear about 11 that. You know, I wanted something to be able to 12 pin him down with. 13 Q. You previously mentioned that you 14 insisted that your telephone conversations be 15 taped; correct? 16 A. That's correct. 17 Q. Were these two conversations taped? 18 A. They should have been, yes. 19 Q. And do you have copies of those 20 tapes? 21 A. I don't, no. 22 Q. Do you know who has copies of those 23 tapes? 24 A. I would assume Banco Santander do. 25 Q. These conversations with Madoff, did</p>
Page 191	Page 193
<p>1 the physical visit in February of 2006 and 2 two subsequent telephone calls with him, that you 3 can recall? 4 A. Well, actually, he was also a party 5 to the conference call with the auditors when 6 I came in at the tail end, so that was one, and 7 I think that's probably the sum total of my -- 8 my contact with him. 9 Q. And, putting aside the conference 10 call with the auditors, the telephone calls 11 between you and Mr. Madoff, was there -- was there 12 anybody else on those calls, in addition to the 13 two of you? 14 A. No, it was just the two of us. 15 Q. And do you know approximately when 16 you had those calls? 17 A. I'm sorry, I can't really recall. 18 But it would have been prior to the signing of the 19 agreements. 20 Q. Would it have been prior to the 21 completion of your -- of the Jaitly report? 22 A. It would have been after, because 23 I'd already identified the issues. That was the 24 point at which I was being told that there were no 25 issues to worry about, and I was saying there</p>	<p>1 you have them from your office in London? 2 A. Yes. 3 Q. And that was the phone that you had 4 insisted that it be taped? 5 A. Yes. 6 Q. And what was the procedure for those 7 tapes? Who stored them? 8 A. They were stored by Banco Santander, 9 as far as I know. I think we only -- at Optimal, 10 I think I've only ever recalled them once, on an 11 unrelated issue. Again, I think it was -- Hugh 12 had sort of queried what I'd said to a manager and 13 I basically had the tapes recalled and it just put 14 him right. 15 THE EXAMINER: When you say "recalled" 16 what do you mean? 17 THE WITNESS: Well -- so we had the 18 phone conversation. Maybe a week later -- I can't 19 remember how long it was -- Hugh sort of made a 20 comment about what I'd said to the manager, and 21 what we did is we asked the IT specialist to 22 retrieve that conversation so everyone could 23 actually hear what -- what the conversation -- 24 what the conversation had been, so it was replayed 25 back to the people who were saying that -- it</p>

49 (Pages 190 to 193)

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MR. RAJIV JAITLEY - 7/16/2012

Page 194	Page 196
1 was -- it was basically -- it was an accusation	1 (2:44 p.m.)
2 that I'd acted unprofessionally.	2 (Break taken.)
3 THE EXAMINER: I'm not concerned about	3 (14:50 p.m.)
4 the substance.	4 THE VIDEO OPERATOR: This is the
5 THE WITNESS: Okay.	5 beginning of videotape number 3, volume I, in the
6 THE EXAMINER: But they were stored in	6 videotaped deposition of Rajiv Jaitly. Going on
7 London?	7 the record. The time is 14:50. Thank you.
8 THE WITNESS: Sorry?	8 MR. BLEICHMAR: Mr. Jaitly, I'm going to
9 THE EXAMINER: They were --	9 mark as exhibit 13 a document bearing Bates stamps
10 THE WITNESS: Yes.	10 3702345 through 360.
11 THE EXAMINER: -- stored in London?	11 (Exhibit 13 marked for identification.)
12 THE WITNESS: That's correct.	12 BY MR. BLEICHMAR:
13 THE EXAMINER: Right.	13 Q. Do you recognize this document,
14 THE WITNESS: And so, essentially,	14 Mr. Jaitly?
15 that -- the tape got recalled and then everyone	15 A. I can't say I specifically do,
16 could hear exactly what I'd said.	16 but -- I mean, there were variations of this in
17 BY MR. BLEICHMAR:	17 existence at the time.
18 Q. And your understanding is that	18 Q. Did you prepare either this document
19 Optimal had control of those tapes?	19 or the variations of this document?
20 A. Well, Santander had control.	20 A. No, but I would have had input into
21 Q. Banco Santander --	21 it, I would expect, particularly in relation to
22 A. Yes.	22 the operational due diligence side of it.
23 Q. -- had control of those tapes?	23 Q. And would you have had input in
24 A. Yes.	24 connection with your work at Banco Santander?
25 Q. Do you know whether those tapes were	25 A. Yes.
Page 195	Page 197
1 ever, as a matter of -- as a matter of course,	1 Q. And do you have any reason to
2 regularly erased?	2 dispute the authenticity of this document?
3 A. I -- I really don't know the	3 MR. DANON: Objection to form.
4 procedure. I think, from my perspective, I was	4 BY MR. BLEICHMAR:
5 just concerned to have it done.	5 Q. You can answer.
6 I know there were some complications in	6 A. No. But I don't specifically recall
7 terms of getting it done because of the way that	7 this particular document.
8 information is stored on the servers, and so on,	8 THE EXAMINER: This -- this document
9 but I -- I'm pretty certain it was done in the	9 appears, from the front page, to have been
10 end, because, if my memory serves me correctly,	10 prepared in 2003; is that right?
11 that's what we did on one occasion.	11 THE WITNESS: Yes, that's before --
12 Q. Were there any restrictions as to	12 THE EXAMINER: Before you --
13 which conversations got taped, or was it	13 THE WITNESS: Yes.
14 indiscriminately every conversation you had on --	14 THE EXAMINER: Before you were there, so
15 on that telephone?	15 you wouldn't have had any input into this version?
16 A. No, as far as I was concerned, my	16 BY MR. BLEICHMAR:
17 phone was a taped phone, period.	17 Q. Well, let me -- let me rephrase
18 THE EXAMINER: We've got five minutes on	18 that.
19 the tape.	19 Did you see this document while you were
20 MR. BLEICHMAR: Why don't we go off the	20 employed at Banco Santander?
21 record. Thank you.	21 A. I don't recall specifically seeing
22 THE VIDEO OPERATOR: Going off the	22 this particular document.
23 record. The time is 14:43. This is the end	23 Q. Okay.
24 of tape 2, volume I in the videotaped deposition	24 A. But I'm -- I'm sure I've seen
25 of Rajiv Jaitly.	25 variations of it.

50 (Pages 194 to 197)

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MR. RAJIV JAITLEY - 7/16/2012

Page 198	Page 200
<p>1 THE EXAMINER: There were some 2 procedures in place for due diligence when you got 3 there?</p> <p>4 THE WITNESS: Oh, yes. The analysts 5 used to do the due diligence. What changed when 6 I came was that there were dedicated people just 7 doing the operational due diligence. 8 Maybe I should just explain what 9 "due diligence" means as well, because there were 10 two types of due diligence that were done on a 11 fund. 12 There was investment due diligence, which 13 looked at the investment strategy, so, you know, 14 the split strike option strategy, that would have 15 been part of the investment team's due diligence 16 work; and then there was the operational 17 due diligence. 18 So before I arrived, I guess, it would 19 have all just been encompassed under a standard 20 due diligence. So we were -- we were really 21 trying to sort of create more process around the 22 operational due diligence side. 23 MR. BLEICHMAR: Let me mark as 24 exhibit 14 a document bearing Bates stamps 25 3742547.</p>	<p>1 we started, we needed this. 2 Now, one of the -- one of the issues was 3 that, with this launch, when they decided, there 4 was actually very little time to actually launch 5 this product, and there was absolutely no way that 6 we could have done the due diligence on this in 7 relation to all the new things that were there 8 in -- in the format that was needed. 9 So one of the things that we agreed was 10 that we would ensure that, on every manager, we 11 had at least the PIRQ done, and the -- the idea 12 was that there would be a PIRQ on file which 13 actually, at least sort of at a basic level, 14 showed that there'd been some review done in 15 relation to each investment. 16 Q. Do you see there in the email 17 there's a list under -- a list of bullet points 18 under the heading "The team"? 19 A. Yes. 20 Q. Is that, to the best of your 21 recollection, a fair and accurate list of the 22 members of your operational due diligence team? 23 A. Yes. I -- I think the -- the last 24 two people are probably junior analysts -- well, 25 they're called team members, so that's fine.</p>
Page 199	Page 201
<p>1 (Exhibit 14 marked for identification.) 2 BY MR. BLEICHMAR: 3 Q. Do you see, Mr. Jaitley, this is a 4 document reflecting an email from Michelle Perry, 5 in which you are copied, on September 24th, 2007? 6 A. Yes, that's correct. 7 Q. Did you receive this document, 8 or this email? 9 A. Yes, I expect I did. 10 Q. And did you receive it as part of 11 your responsibilities at Banco Santander? 12 A. Yes. 13 Q. And do you have any reason to 14 dispute the authenticity of this document? 15 A. No. 16 Q. What is this document about? 17 A. This deals with the Spanish product 18 launch. So this is looking at the whole process 19 around the -- the launch of the Spanish product. 20 Q. Okay. 21 A. And -- and -- I mean, essentially, 22 what we -- just to sort of explain what "PIRQ" 23 means in that email, that's the pre-investment 24 review questionnaire, which I referred to earlier, 25 where we said that prior to an investment, before</p>	<p>1 That's what they were, team members. 2 Q. Going back to Ms. Soosaipillai, do 3 you have an understanding of whether she still 4 works at Optimal or Banco Santander? 5 A. She works at AXA Investment 6 Management. She followed me when I went there. 7 Q. Do you have an understanding -- so 8 she left Optimal; correct? 9 A. Shortly after I left, yes. 10 Q. Do you have an understanding as to 11 why she left Optimal shortly after you? 12 A. Well, she'd expressed an interest -- 13 I mean, she had moved from GAM, where I was 14 previously. I had hired her from there. And she 15 wished to sort of carry on with that relationship, 16 so she asked me if there was a place for her on 17 the team and I arranged for an interview for her 18 so that she could do that. 19 Q. Do you have an understanding as to 20 why she decided to leave Optimal, rather than -- 21 and start a new job, with respect to issues 22 relating to Optimal? 23 A. Well, she knew the concerns I had -- 24 MR. DANON: I'm going to object to the 25 form of the question and also object as going</p>

51 (Pages 198 to 201)

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MR. RAJIV JAITLEY - 7/16/2012

Page 202	Page 204
<p>1 beyond the scope.</p> <p>2 THE EXAMINER: I think her reasons for</p> <p>3 leaving are a little outside the scope.</p> <p>4 MR. BLEICHMAR: Well, I'm trying to find</p> <p>5 out whether her reasons for leaving have to do</p> <p>6 with Madoff.</p> <p>7 THE EXAMINER: Yes, but I think that's</p> <p>8 rather outside the scope.</p> <p>9 MR. BLEICHMAR: Okay.</p> <p>10 BY MR. BLEICHMAR:</p> <p>11 Q. Mr. Jaitley, what did you do to</p> <p>12 prepare for this deposition?</p> <p>13 A. Well, I read the papers that you</p> <p>14 sent.</p> <p>15 Q. And how long did you spend preparing</p> <p>16 for this deposition?</p> <p>17 A. Probably a -- a day, a little bit</p> <p>18 more than that.</p> <p>19 Q. Did you have any conversations with</p> <p>20 anyone other than your counsel with respect to</p> <p>21 this deposition?</p> <p>22 A. I think you will have seen</p> <p>23 the exchange of emails that I had with</p> <p>24 Richard Homewood, and I copied Santander into</p> <p>25 that, because I believed that -- again, I didn't</p>	<p>1 rephrase that.</p> <p>2 Are you paying the legal fees of your</p> <p>3 attorneys?</p> <p>4 A. No.</p> <p>5 Q. And do you have an understanding as</p> <p>6 to who is paying them?</p> <p>7 A. Yes.</p> <p>8 Q. And who is that?</p> <p>9 A. Santander. In the same way as</p> <p>10 I think you're paying me for my time today.</p> <p>11 Q. Correct. And how did you come to</p> <p>12 such an arrangement for Santander to pay for your</p> <p>13 legal fees?</p> <p>14 A. Well, I was contacted by counsel,</p> <p>15 Jaime Calvo, and by Esteban Estevez, and what they</p> <p>16 said to me was --</p> <p>17 THE EXAMINER: Well, hang on, you were</p> <p>18 contacted by counsel?</p> <p>19 THE WITNESS: By Jaime, who was --</p> <p>20 who is Optimal's counsel, that's correct, and</p> <p>21 Esteban Estevez.</p> <p>22 MR. BLEICHMAR: After his employment.</p> <p>23 THE EXAMINER: So? Are you content for</p> <p>24 this evidence to be given?</p> <p>25 MR. DANON: Give me one second. We say</p>
Page 203	Page 205
<p>1 really want to be viewed as a partisan to either</p> <p>2 side, and it was important that both sides knew</p> <p>3 what discussions I was having.</p> <p>4 Q. Did you have any discussions with</p> <p>5 anyone other than your attorney with respect to</p> <p>6 the substance of your testimony here today?</p> <p>7 A. No. I mean, I -- I have -- I had a</p> <p>8 phone call from Sharmila to inform me that she was</p> <p>9 going to be deposed as well, but there wasn't any</p> <p>10 discussion of -- of the details, and I --</p> <p>11 you know, I have been in contact with Optimal</p> <p>12 people.</p> <p>13 For example, a couple of days ago I had a</p> <p>14 phone call from Christopher Gibson, who was going</p> <p>15 to be coming into London, and he said, well, the</p> <p>16 team were all meeting up, would I like to meet up;</p> <p>17 unfortunately, I couldn't actually make it to that</p> <p>18 evening.</p> <p>19 THE EXAMINER: The question was about</p> <p>20 the substance of your deposition, not about social</p> <p>21 arrangements, or anything else.</p> <p>22 THE WITNESS: Okay. Fine. Well, no is</p> <p>23 the answer. Thank you.</p> <p>24 BY MR. BLEICHMAR:</p> <p>25 Q. How did it come about that -- let me</p>	<p>1 the fact that they had the conversation is not</p> <p>2 privileged. The content --</p> <p>3 THE EXAMINER: The fact that they had</p> <p>4 the conversation --</p> <p>5 MR. DANON: Right.</p> <p>6 THE EXAMINER: -- is not privileged.</p> <p>7 MR. DANON: But the content --</p> <p>8 THE EXAMINER: The contents of the</p> <p>9 conversation may have --</p> <p>10 MR. DANON: -- will have some privilege</p> <p>11 implications, to the extent there is any common</p> <p>12 interest privilege that prevails afterwards.</p> <p>13 THE EXAMINER: It may well have.</p> <p>14 BY MR. BLEICHMAR:</p> <p>15 Q. Let's put aside the conversation</p> <p>16 with Mr. Calvo. Did you have an independent</p> <p>17 conversation with Mr. Estevez?</p> <p>18 A. Yes.</p> <p>19 Q. And Mr. Estevez is not an</p> <p>20 attorney -- correct? -- to the best of your</p> <p>21 understanding?</p> <p>22 A. Indeed not, he is not an attorney.</p> <p>23 Q. And what did you discuss with</p> <p>24 Mr. Estevez?</p> <p>25 MR. DANON: I think I would still assert</p>

52 (Pages 202 to 205)

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MR. RAJIV JAITLEY - 7/16/2012

Page 206	Page 208
<p>1 the objection for Esteban. First of all, he is an 2 attorney, although he was not acting as the 3 counsel, but he would have been doing it at the 4 direction of counsel. 5 THE EXAMINER: What is his position? 6 MR. DANON: He is the current CEO of 7 Optimal. 8 THE EXAMINER: Are the details of the 9 arrangement by which, as I understand it, you're 10 paying for his time and Santander are paying for 11 his legal fees, material? Are you going to put 12 all this in front of a jury? You don't know yet. 13 MR. BLEICHMAR: I -- I don't know yet. 14 That's why this is discovery. 15 Mr. Estevez was not acting as a lawyer. 16 He's a third party, compared -- 17 THE EXAMINER: He's not a lawyer, but -- 18 but -- 19 MR. DANON: At the direction of counsel 20 he'd be talking to him. 21 THE EXAMINER: Mr. Danon says he was 22 acting at the direction of counsel, which may or 23 may not be borderline; I don't know. 24 I think you can pursue it, but we may 25 have to put the brakes on at any given moment.</p>	<p>1 THE VIDEO OPERATOR: Going back on the 2 record. The time is 15:12. 3 (Exhibit 15 marked for identification.) 4 BY MR. BLEICHMAR: 5 Q. Mr. Jaitley, I'm going to show to 6 you what I have marked as exhibit number 15, 7 bearing -- a document bearing Bates number 213095 8 through 100, and I will represent to you that the 9 highlighted portions were not in the original 10 document, but I will not be asking you 11 specifically about those portions. 12 A. Oh, I see, they were taken out. 13 THE EXAMINER: Sorry, these -- these 14 have been highlighted since? 15 MR. BLEICHMAR: Correct. 16 THE EXAMINER: Okay. 17 BY MR. BLEICHMAR: 18 Q. Do you see that this document 19 reflects an email from you to Hugh Burnaby-Atkins 20 on June 12th, 2006? 21 A. Yes. 22 Q. Did you send this email? 23 A. I believe I did, yes. 24 Q. And did you send it as part of your 25 work responsibilities at Banco Santander?</p>
Page 207	Page 209
<p>1 MR. BLEICHMAR: Okay. 2 BY MR. BLEICHMAR: 3 Q. When did you have this conversation 4 with Mr. Estevez? 5 A. I think shortly after I responded to 6 Mr. Homewood's email to me. 7 Q. And did -- 8 A. He'd sent me an email saying that 9 the intention was to -- to depose me, and I then 10 responded and I copied Santander in to that 11 response. 12 So he then rang me up, essentially, to 13 say -- well, basically, what he said to me was 14 that my evidence was my evidence. The only thing 15 that he could say was that I should get some legal 16 advice on it, and, to the extent that I wanted 17 legal advice, they'd pay for it. And that was 18 essentially it. 19 MR. BLEICHMAR: Let's go off the record 20 for two minutes. 21 THE VIDEO OPERATOR: Going off the 22 record. The time is 15:02. 23 (3:02 p.m.) 24 (Break taken.) 25 (3:12 p.m.)</p>	<p>1 A. Yes. 2 Q. And do you have any reason to 3 believe that this document is not an authentic 4 document? 5 A. No. 6 MR. BLEICHMAR: Let me mark as 7 exhibit 16 a document bearing Bates stamps 8 3755329. 9 (Exhibit 16 marked for identification.) 10 BY MR. BLEICHMAR: 11 Q. And do you see that this document 12 reflects an email from you to Mr. Echeverria on 13 October 19, 2006? 14 A. Yes. 15 Q. And, again, the highlighted part was 16 not part of the original document. The -- the 17 highlight -- the highlight itself; the text is 18 part of the original document, but the highlight 19 itself was not there. 20 Did you send and receive this -- 21 A. But this was in the documents. 22 I mean, this was in the documents that was sent, 23 even including the highlighted bit. 24 MR. CAULFIELD: I think he's saying that 25 the original didn't have that mark on it.</p>

53 (Pages 206 to 209)

CONFIDENTIAL
MR. RAJIV JAITLEY - 7/16/2012

Page 210	Page 212
<p>1 THE WITNESS: Oh, I see. It didn't have</p> <p>2 the highlighting, yes. I'm sorry,</p> <p>3 BY MR. BLEICHMAR:</p> <p>4 Q. Did you send and receive this set of</p> <p>5 emails?</p> <p>6 A. Yes.</p> <p>7 Q. And did you send and receive them as</p> <p>8 part of your work at Optimal?</p> <p>9 A. Yes.</p> <p>10 Q. At Banco Santander, excuse me.</p> <p>11 A. Well, at both.</p> <p>12 Q. And do you have any reason to</p> <p>13 dispute the authenticity of this document?</p> <p>14 A. No.</p> <p>15 MR. BLEICHMAR: Thank you, Mr. Jaitley.</p> <p>16 THE EXAMINER: That now concludes your</p> <p>17 examination?</p> <p>18 MR. BLEICHMAR: That concludes my</p> <p>19 examination. I reserve the time to re-examine.</p> <p>20 THE EXAMINER: Absolutely. Yes,</p> <p>21 Mr. Danon.</p> <p>22 CROSS-EXAMINATION BY MR. DANON:</p> <p>23 BY MR. DANON:</p> <p>24 Q. Good afternoon, Mr. Jaitley.</p> <p>25 A. Good afternoon.</p>	<p>1 was operating a fraud or a ponzi scheme; correct?</p> <p>2 A. No. I would have reacted quite</p> <p>3 differently, had that been the case.</p> <p>4 Q. Okay. You also, I think -- during</p> <p>5 your direct examination, there were questions</p> <p>6 regarding the explanatory memo. I think you</p> <p>7 called it the offering memorandum.</p> <p>8 A. Yes.</p> <p>9 Q. Do you -- do you recall those</p> <p>10 questions; right? And -- okay. Do you -- do you</p> <p>11 recall testifying about the --</p> <p>12 A. About the memorandum.</p> <p>13 Q. -- offering memorandum?</p> <p>14 A. Yes.</p> <p>15 Q. Correct. Okay. Do you recall</p> <p>16 what offering memorandum you reviewed, which one</p> <p>17 you --</p> <p>18 A. No, I cannot at this stage remember.</p> <p>19 Q. Okay. Did you --</p> <p>20 A. There were a number of variations to</p> <p>21 it, though.</p> <p>22 Q. Okay. Do you -- do you recall what</p> <p>23 year you would have reviewed the offering</p> <p>24 memorandum?</p> <p>25 A. Well, I mean, only really from some</p>
Page 211	Page 213
<p>1 Q. I think I've asked you -- I've</p> <p>2 referred you to exhibit 5. I just have a few</p> <p>3 questions that I'm going to ask you that follow up</p> <p>4 on some questions Mr. Bleichmar had asked you</p> <p>5 before.</p> <p>6 If you pull in front of you exhibit 5,</p> <p>7 which Mr. Bleichmar had showed to you and talked</p> <p>8 to you, this is your report; correct?</p> <p>9 A. Yes.</p> <p>10 Q. And I think during the testimony it</p> <p>11 was referred to it as "the Jaitley report"; is that</p> <p>12 correct?</p> <p>13 A. That's right.</p> <p>14 Q. And this, as you testified before,</p> <p>15 was the only report, written report, that you</p> <p>16 prepared on Madoff?</p> <p>17 A. That's correct.</p> <p>18 Q. And SUS; correct?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And nowhere in this written</p> <p>21 report do you conclude that Mr. Madoff was</p> <p>22 operating a fraud or a ponzi scheme; correct?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay. And you never told anyone at</p> <p>25 Optimal, did you, that you concluded that Madoff</p>	<p>1 of the documentation I think I've seen since, but,</p> <p>2 no, I can't specifically recall which version it</p> <p>3 was.</p> <p>4 Q. Okay. Do you recall which fund it</p> <p>5 was that you reviewed the offering documents for?</p> <p>6 Was it for the --</p> <p>7 A. I think it was for SUS.</p> <p>8 Q. Okay. And what SUS fund? Was it</p> <p>9 the Bahamian SUS fund or the Irish SUS fund?</p> <p>10 A. I believe it was the Irish SUS fund,</p> <p>11 but I can't be certain.</p> <p>12 Q. So you don't recall, at least here,</p> <p>13 with certainty whether you ever reviewed the</p> <p>14 Bahamian fund's offering documents; is that</p> <p>15 correct?</p> <p>16 A. I -- I don't recall specifically</p> <p>17 which entities' documents it -- it was that</p> <p>18 I reviewed now.</p> <p>19 Q. And I believe your testimony was</p> <p>20 that you felt there were some disclosures in there</p> <p>21 that you felt were not done; is that -- was that</p> <p>22 your testimony?</p> <p>23 A. No.</p> <p>24 Q. Okay.</p> <p>25 A. That's not my testimony. What</p>

54 (Pages 210 to 213)

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MR. RAJIV JAITLEY - 7/16/2012

Page 214	Page 216
<p>1 I felt was that there were certain items of 2 disclosure that I felt didn't accurately reflect 3 exactly how we were operating, and that was some 4 of the discussions that I then had with counsel. 5 Q. And this is prior to, I think you -- 6 you said, your view prior to any discussions with 7 counsel. We already went through the privilege 8 issue. I don't want to -- 9 A. That's correct, yes. 10 Q. Do you -- did you, prior to any 11 discussions with counsel, have a view of any 12 specific section of that offering memorandum? 13 A. Sorry, of -- a view as in did I see 14 it -- 15 Q. Yes. 16 A. -- or a view as in did I have an 17 opinion on it? 18 Q. Did you have an opinion on it? 19 A. Yes, I did have an opinion on it. 20 Q. Okay. What specific section are you 21 referring to? 22 A. It -- it was to do with the work 23 that was being done in relation to Madoffs, 24 the due diligence aspects of it. 25 Q. Do you recall what section of the</p>	<p>1 (3:20 p.m.) 2 THE VIDEO OPERATOR: Going back on the 3 record. The time is 15:19. Thank you. 4 MR. BLEICHMAR: Nothing further. 5 THE EXAMINER: Thank you very much. 6 That concludes your deposition, Mr. Jaitley. 7 Thank you very much. 8 THE WITNESS: Thank you. 9 THE VIDEO OPERATOR: Going off the 10 record. The time is 15:20. End of tape 3, 11 volume I. This is the end of the videotaped 12 deposition of Rajiv Jaitley. 13 THE EXAMINER: Thank you. 14 (Whereupon, the deposition concluded at 3.20 p.m.) 15 16 17 18 19 20 21 22 23 24 25</p>
Page 215	Page 217
<p>1 offering section? 2 A. Not specifically, no. 3 Q. Do you recall what the offering 4 memorandum said that you -- that you were 5 referring to? 6 A. I -- I think it related to the 7 due diligence procedures that were being 8 conducted. 9 Q. Okay. Any -- any other section, 10 other than that section, the due diligence 11 section? 12 A. No, it was -- it was really in 13 relation to that, so what had we done -- 14 Q. Okay. 15 A. -- in relation to Madoff. 16 MR. DANON: I'm -- I'm done with my 17 examination. 18 THE EXAMINER: Thank you. Any 19 re-examination arising out of that? 20 MR. BLEICHMAR: Give me 30 seconds, but 21 I don't think so. We'll just confer. 22 THE VIDEO OPERATOR: Going off the 23 record. The time is 15:18. 24 (3:19 p.m.) 25 (Break taken.)</p>	<p>1 CORRECTIONS PAGE 2 Page No Line No Description 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

55 (Pages 214 to 217)

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MR. RAJIV JAITLEY - 7/16/2012

Page 218

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have read the foregoing transcript and identify it
as my own and approve same as a true and correct
transcript save and except for changes and/or
corrections, if any, as indicated by me on the
CORRECTIONS page hereof.

Date _____ City _____ State _____

Signed: _____

Page 219

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I, Judith White, of Merrill Legal
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stenographically and thereafter transcribed by me,
and that the foregoing transcript constitutes a
full, true and accurate record of said examination
of and testimony given by said witness, and of all
other proceedings had during the taking of said
deposition, and of the whole thereof, to the best
of my ability.

I further certify that I am not a
relative, employee or counsel of any of the
parties of the within cause, nor am I an employee
or relative of any counsel for the parties, nor am
I in any way interested in the outcome of the
within cause.

Signed _____ Dated _____
(Judith White)

56 (Pages 218 to 219)

CONFIDENTIAL
MR. RAJIV JAITLEY - 7/16/2012

Page 1

A			
Abdul 4:6,6 11:23	acting 206:2,15,22	ahead 44:24,25 46:7	146:23 166:20 170:6
abdulazeem.abduls...	action 1:7 92:15 162:6	106:13	179:1 197:5 203:23
4:9	169:1	air 172:11,11	answered 22:23
ability 13:2,6 57:2	actions 127:13 167:13	Aksia 174:25	answers 53:12 96:8
86:10 219:12	187:21	Alan 2:9 11:7	184:21,25
able 39:6 40:17 63:21	activity 142:23 143:1	allay 119:4,17	antagonism 107:22
64:1,4 94:10,19,22	acts 42:25	allegations 41:3	anybody 26:14 126:4
103:12,14 108:24	actual 128:5 142:22	Allen 1:14 4:13 12:1	126:13,25 163:8
118:11 119:13 120:4	143:1	allocated 130:4	191:12
127:24 130:19,21	added 28:22 62:21	allow 74:2	anyway 140:7 154:20
139:22 140:2 143:3	addition 133:3 190:15	allowed 64:2,15,19	apparent 130:2
143:10 159:1 161:25	191:12	66:20 85:7 94:15,17	apparently 64:2
179:7 182:6 185:13	additional 28:25	aloud 105:10	appear 48:12
192:11	address 12:7,9 192:3	Alvarez 34:1	appeared 60:21,22
absolutely 35:25 71:4	addressed 36:2 149:24	Amadeo 26:18 126:12	98:23
103:13 130:8,20	adequate 87:21	126:22 127:1	Appearing 2:3 3:1 4:1
200:5 210:20	138:11	Amaranth 159:18	appears 48:2 197:9
accept 31:19	advice 207:16,17	160:3,4,6,8,17,25	appendix 186:23
acceptable 32:15	adviser 75:5,10 77:9	amateurs 152:13	apple 66:24
36:25	advisers 85:17	amended 28:19	appointed 159:24
accepted 31:10 75:1	advises 174:23	America 13:17	appointment 27:1
accepting 103:21	advisory 155:1,8,24	amicable 181:3	approach 40:15 54:19
access 66:18 74:3 81:4	adyer@4pumpcour...	Amit 32:3	90:18 107:22 169:1
116:8 130:7	4:15	amount 75:24 85:6	181:7
accompanies 15:11	aellman@labaton.c...	162:25	approached 17:19
account 73:14 92:12	2:11	ample 163:12	22:3 81:8 82:7
94:21 95:19 110:6	afraid 55:15 78:10	analysis 23:15 72:14	approaching 117:2,13
131:18 142:22	79:2	analyst 55:13 125:18	appropriate 31:18
accountant 14:17	afternoon 37:24	125:21 170:24 171:8	46:25 107:14 176:5
15:10,12,19 106:24	145:14 210:24,25	171:9	appropriately 23:18
107:6 164:4,6	agenda 150:2 183:5	analysts 23:12 33:3,11	149:3,9
Accountants 14:18	ago 203:13	33:12,21 35:24 36:20	appropriateness
accounts 72:23 131:16	agree 40:19 95:4	37:16,20 38:3 42:15	107:16,19
135:3,9 153:2,12,21	115:22 174:2 180:10	43:16,20,24 44:10	approve 218:8
154:1,7,18 155:10,12	agreed 84:20 128:17	55:9 65:16 81:14	approximately 18:2
155:22,23 156:4,5	133:22 139:13	98:8 103:21 162:5	24:8 39:20,25 49:2
160:12,13	140:10,19 141:17	198:4 200:24	68:4 83:4,22 84:2
accurate 99:20 200:21	159:25 162:6 200:9	and/or 218:9	124:9 125:22 136:21
219:8	agreed-upon 135:24	annoyed 110:7 124:24	137:2 190:17 191:15
accurately 214:2	agreement 87:25	annual 188:25	April 8:5 24:10 177:4
accusation 194:1	agreements 13:4	answer 12:24 13:19	arb 45:20
Achilles 108:6	191:19	17:22 25:19 36:6	arbitrage 45:9,11,13
acted 194:2	agricultural 14:10,11	46:7,8 53:17 55:6	45:17,18,20 46:4,10
	agriculture 14:9	121:17 122:1 146:19	131:19,22 132:1,9

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MR. RAJIV JAITLEY - 7/16/2012

Page 2

area 17:11 20:9 27:25 33:21 82:10 116:12 135:16 172:1,15 areas 30:6 59:13 113:20 115:8,16,23 144:20 184:22 argue 13:17 argument 50:13 111:13 134:8 192:1 arguments 50:7 133:23 arising 215:19 arose 18:24 144:3 184:21 arranged 201:17 arrangement 25:23 204:12 206:9 arrangements 131:12 203:21 arrested 61:24 arrival 79:22 arrive 57:21 arrived 57:9,17 83:10 84:20 160:17 163:19 198:18 arriving 16:5 aside 77:4 121:11,21 191:9 205:15 asked 50:25 56:9 59:6 66:25 80:11 116:19 121:23 137:15 148:14 193:21 201:16 211:1,4 asking 52:9 58:21 61:19 66:24 78:19,20 79:21 80:17 116:22 135:16 147:6 149:25 152:9 153:19 154:6 208:10 aspect 96:12 178:6 187:6 aspects 74:16 86:16 87:15 179:9 187:2,13 187:16,17,19 214:24	assert 205:25 assertions 110:7,10,18 114:24 120:1 122:16 157:15 assesses 24:5 assessment 38:21,23 148:23 180:10 Asset 17:9 19:19,25 22:13 assets 41:8 84:3 91:4 92:9,16,16 93:5,21 94:3,11,24 95:11 127:22,25 134:22 assist 163:20 assisted 171:10 associated 24:6 Association 14:23 assume 75:23 76:15 192:24 assumed 76:17 Attached 113:17 attachment 67:8 68:12 113:17 attachments 6:4,9,14 48:6 attacking 167:20 affair 15:13 attended 33:8 Attendees 69:20 attention 19:11 129:17 attitude 64:24 attorney 203:5 205:20 205:22 206:2 attorneys 13:16 204:3 attractive 24:17,21 audit 16:9 18:9 63:15 116:25 146:6 auditing 65:19 156:1 auditor 135:25 146:11 148:17 auditors 63:16 65:19 65:20 94:4,7 116:11 116:15 117:13,19,20 118:3 148:12 150:8	191:5,10 audits 164:7 August 68:20 137:3,5 authentic 102:1 112:19 151:2 177:12 209:3 authenticity 47:19 48:17 99:16 124:7 145:24 148:6 156:24 183:19 186:16 197:2 199:14 210:13 author 69:11 authorisations 133:5 authorized 128:17 authors 69:12 Avenue 3:4,8 avoid 76:10 avoided 53:17 aware 13:3 57:21 120:5,13 121:13 179:20 AXA 136:25 174:10 174:20,20,24 201:5 Azeem 4:6 11:23 A-K-S-I-A 174:25 A-X-A 174:24 175:1 a.m 1:17 10:2,18	badly 109:18 Bahamian 213:9,14 bailiwick 49:25 50:15 50:17 51:13 balance 42:2 balances 182:5 Balkir 69:5,5 Banco 20:19 21:6,22 26:10,14 28:4 30:7 37:8 48:24 49:3 54:2 79:22 84:15 112:16 123:24 124:2 156:21 166:23 174:6 175:7 180:8 186:9 192:24 193:8 194:21 196:24 197:20 199:11 201:4 208:25 210:10 bank 3:13 19:1 62:8 108:17 based 20:11 25:16,21 29:12,13,14 32:4,6 75:23 84:15 129:2 148:14 188:10 bases 111:12 basic 12:18 200:13 basically 18:23 38:1 41:18 50:4 53:17 59:20 123:7 129:3 135:20,23 137:11 139:2 148:13 180:20 193:13 194:1 207:13 basics 99:13 basis 41:22 71:14 73:16 95:16 109:14 114:18 115:1,1 119:25 123:7 135:5 138:9,17 139:22 basket 95:24 96:1,5 Bastianpillai 32:3 Bates 6:5,10,15 7:5,11 7:17,25 8:5,9,13,18 8:25 9:5,12 47:13 68:13,14 97:13 101:17 102:10
--	--	--	---

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OPTIMAL_BERLAMONT-000058

CONFIDENTIAL
MR. RAJIV JAITLEY - 7/16/2012

Page 4

183:6 200:25 212:7 calls 96:4 191:2,10,12 191:16 192:5 calm 140:18 141:16 Calvo 204:15 205:16 canceled 54:8 capability 22:10,19 23:9 capacity 34:8 56:3 66:12,13,15 74:24 78:21,22 79:8 81:3 85:2,6 190:8,10 capital 69:23 78:2 career 16:4 24:20 79:9 Caron 32:3 carried 32:17 55:3 63:1 161:3 carry 59:18 93:18 201:15 cart 66:24 case 10:25 34:24 87:10 92:20 212:3 cash 135:4 138:14 cashiers 61:17 catching 139:7 catch-all 106:15 category 46:17 74:5 Caulfield 4:2 11:22,22 28:13 209:24 cause 219:15,18 Cecilia 34:1,3 central 42:24 CEO 26:12 206:6 certain 32:17 41:23 88:12 109:9 120:2 167:2 178:17 181:23 195:9 213:11 214:1 certainly 26:22 34:23 44:6 72:15 77:13 79:10 81:1 88:20 162:20 182:18,20 certainty 213:13 certificate 15:16 219:1 certify 219:4,13	chain 7:1,7,13,19 8:1 8:20 9:1,7 148:10 challenge 108:20 Chambers 2:22 11:16 chance 3:12 11:21 13:20 113:23 117:9 chances 78:25 change 128:17 changed 128:15,16,16 133:4,22 134:14 198:5 changes 218:9 chap 37:21 50:10 80:14 chaperoned 56:19 characteristic 95:15 characterize 46:13 86:15 charge 72:24 74:21 75:19,21 76:2 77:9 charged 74:5 75:2 charges 74:4 charter 15:11,13,22 15:23 chartered 14:17,18 15:10,12 106:23 107:5 check 140:4 checks 133:12 182:5 chief 21:11,20 51:20 84:23 174:12 choose 60:17 chosen 74:22 Chris 170:23 Christopher 171:7 203:14 chunk 83:21 circulate 100:24 circulated 99:3 100:16 102:6,15 circulating 104:4 circumstances 80:24 167:24 185:4 City 3:13 218:14	CIVIL 1:7 claim 127:25 clarify 67:1 68:1 81:11 137:19 Clark 6:3,7,12 7:4 33:22 34:14 48:2 49:6,16 54:12 58:19 69:4 70:4 77:6 81:16 81:22 84:8 97:18 101:19 104:20 106:21 107:19 116:5 118:24 125:11,20 130:25 138:22 141:14 145:18 149:15 151:21 152:19 154:6 155:4 156:1 164:23 181:14 Clark's 119:8,9,16 124:18,20 125:2,3,10 126:2 146:8 classic 74:4 78:11 clear 34:21 42:22 53:6 55:1 85:13 103:13 105:5 140:23 179:1 192:10 clearer 103:10 104:11 clearing 42:25 92:10 clearly 72:12 116:21 119:2 155:16 clears 93:10,15 client 34:7 92:12,16 130:5 135:9 146:12 clients 36:24 104:7 111:22 Clifford 3:12 11:21 close 39:21 closed 39:8,8,19 clue 48:14 codename 131:25 coincidence 18:6 collate 171:3 collation 111:6 colleague 11:7,19,23 40:9	college 13:10 14:13,13 come 27:8 34:7,9 52:4 52:8 54:20 74:1 107:3 139:11,11 152:12 154:15 158:18 162:18 203:25 204:11 comfort 64:22 65:4,11 65:14 86:5,6 88:6,10 92:13 127:21 128:1 135:17 143:8 167:14 167:16 185:5 comfortable 108:25 109:4 120:2,4 122:18 138:1 164:9 coming 56:17 79:2,15 80:13 95:18,19 108:21 158:13 203:15 commenced 187:25 comment 19:11 54:11 59:15 72:7 168:21 193:20 comments 114:3 158:5 168:10,13 commission 73:25 74:8 75:6 committed 157:24 committee 31:6,22,24 31:25 32:9,13,16,22 32:25 33:1,2,7,10,19 34:15,16 35:3,6,14 109:25,25 111:13 162:24 163:2 185:2 committing 114:6,15 common 27:16 205:11 communicated 162:4 company 2:18 11:13 93:9,12 compared 206:16 compensation 28:22 competent 164:13 167:5,7 complaint 98:9,11,14
---	--	---	--

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OPTIMAL_BERLAMONT-000060

CONFIDENTIAL
MR. RAJIV JAITLEY - 7/16/2012

Page 5

98:19,24 99:23 102:6 102:7,23 103:5 complaints 80:5 complete 112:22 131:17 132:15 153:3 153:12 155:15 179:7 184:20,24 185:14 completed 124:19 153:14 158:24 completely 38:4 89:7 98:21,22 140:24 completion 191:21 compliance 128:14 133:12 138:7 complicated 160:14 complications 195:6 comply 88:12 components 96:10 composed 33:3 compromises 89:9 computer 62:8 computers 62:9 concern 43:4 52:8 111:9 114:25 127:20 144:20 161:17 162:4 162:13,14 172:1 concerned 38:19 42:6 55:18 56:2 111:14,20 111:23 133:15 141:10 146:5 151:10 152:6 162:10 194:3 195:5,16 concerning 184:10 concerns 27:2,9 31:8 35:22 36:1 37:11 44:20 45:1 132:14 157:5,7,10,13 160:9 167:19 201:23 conciliatory 180:25 conclude 211:21 concluded 211:25 216:14 concludes 210:16,18 216:6	conclusion 107:4 109:17,22 conclusions 127:12,17 condition 48:12 conduct 40:1 136:1 184:17 conducted 153:4,18,24 154:4,7,11,12,16 165:12 187:6 215:8 conducting 116:25 164:13 165:14,21 167:5 confer 215:21 conference 118:16 150:11 191:5,9 CONFIDENTIAL 1:12 confidentiality 64:11 confirm 94:10,22 133:3 143:11 144:22 confirmation 135:8 conflict 42:11 43:7 108:3 conflicts 65:8 144:9 confrontation 111:8 confusing 38:14 connected 98:3 connection 77:5 100:20 177:8 184:21 186:8 196:24 consequence 24:21 151:11 consider 106:5 considered 18:15,16 constantly 65:17 constituent 170:22 constitutes 219:7 consultancy 174:22 contact 191:8 203:11 contacted 204:14,18 content 161:22 204:23 205:2,7 contention 130:23 131:4 133:13	contents 205:8 context 17:2 28:2 31:5 49:15 54:4 55:9 60:5 80:4 82:4 84:12 91:16,21 103:19 151:25 178:12 contract 26:22 28:4,7 28:10,19 29:1 30:4,5 87:24 88:14 90:11 contracts 87:13 88:23 187:11,12 190:22 192:5,9 contractual 86:23,25 87:6,7,17,20 91:23 127:19 129:11 131:12 132:18 control 38:18 95:14,14 96:12,14 194:19,20 194:23 controlled 93:25 95:17 144:1 controlling 95:12 controls 59:6,10 143:16 convenient 142:12 conversation 22:5 37:23 88:20 116:11 117:6 129:2 138:23 138:24 139:1 172:6 193:18,22,23,24 195:14 205:1,4,9,15 205:17 207:3 conversations 26:24 90:9 117:14 121:3,7 121:11,18,22 168:2 180:18 190:7,17,20 192:14,17,25 195:13 202:19 conversion 45:22 46:3 46:14 47:1 convert 103:23 convertible 45:20 convince 182:7 COO 32:7 37:19 52:14	copied 6:8,13 8:23 9:4 97:20 101:20,21 104:21 199:5 202:24 207:10 copies 192:19,22 copy 28:7,10 98:8 102:1 112:19 170:12 corner 113:7 corporate 16:12 187:21 corporation 1:19 10:20 92:10 correct 15:19 17:25 19:19 20:12,13 31:22 33:16 38:21,24 43:17 43:21 46:18 48:24 53:8 58:22 59:25 68:10,18,21 70:16 75:8,20 87:8,18 89:17 92:4,14 93:2,4 94:24 96:12 98:4 99:21,25 100:23 101:20 105:2 107:10 108:11 117:20 118:21 121:21 123:25 124:2 130:12 132:4,16,25 134:9 137:3,21,22 138:4 144:14 145:1,2,24 146:17,18 148:19,25 150:8 152:20 161:4 161:15 167:6 172:14 172:22 175:3,4,7 176:9 177:5 178:2,24 178:25 179:4,10,13 180:9 183:19 184:7 184:12,18,19,22 185:18 186:10 187:1 187:4,5,9,17 190:10 192:6,15,16 194:12 199:6 201:8 204:11 204:20 205:20 208:15 211:8,12,17 211:18,22,23 212:1
---	--	---	---

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OPTIMAL_BERLAMONT-000061

CONFIDENTIAL
MR. RAJIV JAITLEY - 7/16/2012

Page 6

212:15 213:15 214:9 218:8 corrections 217:1 218:10,11 correctly 15:24 18:12 26:21 34:2 37:18 38:12 41:23,25 75:13 88:1,15 89:18 90:5 131:24 132:7 134:13 139:5 155:3 195:10 counsel 11:3 89:22 120:16,22,25 121:3,8 121:12,19,25 122:3,8 122:11 129:13 143:22,24 202:20 204:14,18,20 206:3,4 206:19,22 214:4,7,11 219:14,16 count 62:14 counterparty 134:24 142:24 143:2,4,11 144:23 179:10 couple 37:25 38:6 89:19 139:22 173:9 188:4 203:13 course 13:22 17:4 21:14 86:7 141:3 162:5 195:1 court 1:1,24 4:13 6:19 6:24 10:24 11:1 12:23 112:3 123:12 cover 48:1 65:8 119:13 135:16 187:20 189:5 covered 23:15 106:14 covers 14:24 105:23 create 23:17 24:18 25:4 158:11,12 173:6 173:10 198:21 created 17:15 55:19 creating 20:5 175:24 credibility 44:9 51:24 credit 43:13 cropped 188:23 Cross-examination	5:5 210:22 cross-lending 160:15 cue 59:20 current 142:22 206:6 Currently 131:16 custodian 93:2,3,24 95:5,8,10,13 custodied 95:16 custody 96:10,16 cut 35:23 cut-and-dried 35:18 D D 5:1 10:1 danger 65:7 Danon 3:3 5:5 11:17 11:17 13:15 22:21 36:10 44:21,24 46:5 55:4,24 58:2 66:2,4 68:6 70:18 71:19 72:9 73:10 75:11 76:3,12,20 77:11,19 78:8 95:2,6 100:5,17 100:18 102:17 110:21 113:22 115:25 118:14 120:20 121:2,5,15 134:18 144:7 152:22 154:9 164:18,22 165:2 187:8 189:17 190:2,12 197:3 201:24 204:25 205:5 205:7,10,25 206:6,19 206:21 210:21,22,23 215:16 date 10:9 24:12 39:24 113:11 124:16 125:25 175:14,21 218:14 dated 6:4,8,13 7:4,10 7:17,24 8:5,18,24 9:5 9:11 48:3 68:20 104:21 105:22 147:24 150:18 156:16 219:21	dates 28:24 29:22 David 118:4,8 Davidson 2:13 11:9 day 57:11,13 66:14 139:21 202:17 days 203:13 deal 59:19 61:20 89:22 90:21 106:3,6,8,11 133:8 167:22,25 190:21 dealer 131:13 134:23 136:4 154:25 155:9 155:21 156:5 dealership 154:20,23 155:4 deals 199:17 dealt 65:3 72:17 99:5 167:11 171:25 173:13 179:24 180:22 debate 40:20 166:9 debated 91:18 decent 181:5 Dechert 4:3,7 11:23 decide 44:16 decided 41:21 42:1 45:3 176:5 179:21 188:24 200:3 201:20 decision 19:1 35:8 44:4,14,19 45:3 80:16 106:18 120:11 179:20 decisions 33:4 34:17 46:17 47:5,7 DECLARATION 218:1 declare 218:4 dedicated 23:16,18 198:6 deeply 100:15 defend 163:1 defendant 28:15 141:23 defendants 3:1 11:18	11:21 13:5 define 95:8,10 defunct 14:13 degree 13:10 14:5,8 15:1,6 Deloitte 17:25 19:16 19:18 Deloitte 16:7,8,17,21 16:21 17:6 delve 100:15 demonstrated 116:21 departure 180:19 DePauw 98:9 99:23 DePauw-related 102:6 depends 95:7 DEPONENT'S 218:1 depose 207:9 deposed 12:16 203:9 deposition 1:12 10:21 12:2 97:3,10 195:24 196:6 202:12,16,21 203:20 216:6,12,14 219:11 describe 29:5 39:3 45:10 144:17 described 47:9 98:12 describes 103:5 describing 56:13 143:9 description 6:1 46:24 217:2 desks 62:15 despite 72:24 112:12 158:4,4 detail 19:12 24:2 39:4 52:6 59:16 72:16 77:20 100:8 162:25 details 27:13 71:12,18 101:12 127:10 160:24 203:10 206:8 determine 32:16 85:6 determined 19:4 56:21 106:13 122:3 develop 17:10 20:9
---	---	---	--

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OPTIMAL_BERLAMONT-000062

CONFIDENTIAL
MR. RAJIV JAITLEY - 7/16/2012

Page 7

22:11 28:1 30:3 82:10 developed 59:9 91:25 developing 17:13 27:5 58:5 difference 23:22 32:24 52:2 178:22 different 31:20 34:4 40:23 49:19 55:2 71:22 72:5 86:16 87:2 154:21,24 167:16 176:1 181:6 187:20 differently 93:1 212:3 difficult 78:19 79:4,17 79:21,25 140:17 141:15 difficulties 142:19,21 160:24,25 difficulty 106:25 dig 59:16 diligence 8:13,17 17:12,14,17 20:2,7 20:16 22:10,19 23:9 23:11 27:18 31:16 40:1,8,17,22 54:23 54:24,24 56:24 57:2 58:7 60:13 64:6 78:13 80:3,3 86:13 86:16 87:16 88:22 91:2,19 99:2 100:14 100:21 103:22 105:17 106:4,22 108:16 120:8 141:13 153:14 157:6,9 159:5 159:9,17,21,22,25 160:21 161:3 163:15 164:14,24 165:12,17 165:20,21 167:6,18 170:19 172:3 174:18 174:23 175:25 176:4 177:17,22,24 178:3,4 178:9,9,23 180:11 181:8 182:4 184:17	185:14 187:3,6,24 188:16,17 189:4,8 196:22 198:2,5,7,9 198:10,12,15,17,20 198:22 200:6,22 214:24 215:7,10 Dillon 36:17 40:4,6 43:17,21 45:7 139:5 dinner 22:4 direct 26:11 53:11 67:7 129:17 131:7 146:16,20 147:4 159:7 177:14 186:22 212:5 directed 159:7,8 direction 186:5 206:4 206:19,22 directly 28:14 53:15 117:13 129:15 162:19 165:24 director 18:20 directors 21:18 disagree 173:22,24 disagreed 157:15 disagreement 109:21 disagreements 168:17 discharged 98:16 103:7 disclose 121:18 disclosed 99:5 104:6 120:11 disclosure 103:2 214:2 disclosures 102:20,22 103:3,10 104:11 120:18 122:12,14 213:20 discovered 84:6 138:20 discovery 206:14 discrepancy 134:17 discretion 88:4 discretions 73:19 discuss 22:7,8 30:20 30:23 76:24 77:6,17	82:13,16,19 84:7 85:3 107:12,15 109:21 127:7 166:7 166:10 167:8 172:4,6 179:15 180:13 181:13 185:2 205:23 discussed 35:11 57:25 77:14 82:17 104:6 107:8 110:1 148:15 162:25 166:13,17 167:10,11 168:20 169:16 170:16 171:15 172:2 173:18 179:5,19 187:10 discussing 148:16 discussion 52:17,25 53:7,21 84:10 116:14 127:5 129:15 146:2,4 147:12,15 150:2,8 203:10 discussions 28:1 34:10 51:11,15 111:25 120:15 121:25 166:1 173:14,16 203:3,4 214:4,6,11 dispute 48:16 99:15 124:6 145:22,23 148:5 156:23 183:18 186:15 197:2 199:14 210:13 distinguishing 154:24 distribute 125:5 distributed 125:23 126:1,22 District 1:1,1 10:24,24 division 16:9 18:9 divulge 121:18 docket 6:20,25 112:4 document 6:21 8:7,11 8:15 47:13,19,24 48:9,11,17,20,22 68:15 97:13,18,22,23 98:17 99:14,16,20 100:16 101:17 102:1	102:2,9,10,16 103:10 104:11,13 122:25 123:10,17,20,21 124:7,10 134:10,11 142:4,5,11 145:16,24 147:17,20 148:6,9 150:13 151:2 156:11 156:14,18,20,24 169:17 176:25 177:12 182:12,16,23 183:19,23 184:4 185:21,25 186:3,16 196:9,13,18,19 197:2 197:7,8,19,22 198:24 199:4,7,14,16 208:7 208:10,18 209:3,4,7 209:11,16,18 210:13 documentation 127:20 128:18 131:17 132:18 135:1 213:1 documents 98:12 99:5 105:20 113:25 128:12 132:15 156:1 188:2 189:13 209:21 209:22 213:5,14,17 doing 25:6 30:2 43:5 54:22 63:10 78:12 80:2 88:3 91:19 99:9 104:4 105:16 108:25 122:17 128:2,3 138:21 139:14 141:7 141:13 151:17 155:19 157:8 158:10 164:7,11 172:3 178:6 198:7 206:3 dotted 26:15,20 doubt 102:12 draft 8:12 112:23 113:14,18 166:12 169:5,13,15,18 170:9 170:12,17,17 drafts 113:13 169:14 driven 27:2 drives 170:11
---	--	--	---

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OPTIMAL_BERLAMONT-000063